WAYS & MEANS, REAL ESTATE TRANSACTIONS AND FINANCE COMMITTEE
of the
SUFFOLK COUNTY LEGISLATURE

Minutes

A special meeting of the Ways & Means, Real Estate Transactions and Finance Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on **February 24, 2003.**

MEMBERS PRESENT:
Legislator George O. Guldi - Chairman
Legislator Andrew A. Crecca - Vice Chairman
Legislator David Bishop
Legislator Michael J. Caracciolo
Legislator Ginny Fields
Legislator Vivian Viloria Fisher

MEMBERS ABSENT:
Legislator Martin W. Haley - Excused Absence

ALSO IN ATTENDANCE:
Paul Sabatino, II - Counsel to the Legislature
Carl Yellon - Aide to Legislator Crecca
Frank Tassone - Aide to Legislator Crecca
Gerard Greco - Aide to Legislator Caracciolo
Ivan Young - Aide to Presiding Officer
Fran Siems - County Executive's Office
Robert Bortzfield - County Executive's Office, Deputy Budget Director
Ken Knappe - County Executive's Office
Bill Faulk - County Executive's Office
Fred Pollert - Director, Budget Review Office
Lance Reinheimer - Budget Review Office
Joseph Sawicki - Suffolk County Comptroller
Robert Cabble - Deputy County Attorney
Theodore Sklar - Deputy County Attorney
Loren Houghton - Treasurer's Office
Jeffrey L. Tempera - Labor Relations
Margaret Ann DeMarzo - Employee Benefits - Civil Service
Frank J. DiSanto, Jr. - Employee Services
Erick Askerberg - Labor Relations
Debbie Troise - Civil Service
Alan Schneider - Civil Service
Paul Greenberg - Civil Service
Phyllis Garbarino - AME
Heidi Wolpow - Ernst & Young
Peter Dowd - Ernst & Young
J. Jioni Palmer - Newsday

All other interested parties

MINUTES TAKEN BY:
Ana Grande- Court Stenographer

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(THE MEETING WAS CALLED TO ORDER AT 11:45 A.M.)

CHAIRMAN GULDI:
Let's call the meeting to order. We'll begin with the salute to the flag to be led by Legislator Fields.

(SALUTATION)

CHAIRMAN GULDI:
There are some members of the Committee still en route, but we'll get started anyway so that we're not all day about this. I have distributed to Committee members, and I'm making further copies for those who are en route, the following documents: A letter dated February 20, to me as Chairman, from the law firm of Twomey, Latham, Shea and Kelley, which I'll address again in just a moment; and a February 21st cover letter, and a printout, if you will, of the disbursements under VYTRA for the fiscal year ending December 31, 2002, only listing vendors and amounts, not listing any reimbursements to individuals or any vendors who saw less than twenty-five thousand dollars in a year. So we'll call it the principal vendors who received payments.

I've also distributed, and will be discussing them, copies of Court papers in the pending litigation of County of Suffolk against the Segal Company. And the County Attorney's Office has, in response to my letter, there's Mr. Sklar and Mr. Gable are here and we will be addressing the content of that litigation later in the meeting.

The letter I got from -- for the record on a week ago Thursday, I reached out to John Shea, who I understood was the attorney in charge of the Segal matter at Twomey, Latham, because it had come to my attention that there are been some difficulty in serving the subpoenas that we had issued, in order to ask him if he would accept service for his clients and respond to the subpoenas. He informed me at that time that he was literally, we spoke at 5:30 or 600 in the evening on Thursday, and he was literally leaving with his kids for vacation for the following week, as so many people did, and not returning until this morning.

The three-page letter he sent me, I'm going to put some of it into the record. Basically it talks about his representation -- the first paragraph talks about his representation and his prior conversations with Chairman Crecca, former Chairman Crecca, now Vice Chairman

Crecca, to discuss their testimony here.

The third paragraph reads, and I'll pick it up there, "we recently learned that your newly configured Ways & Means Committee has issued subpoenas to Ms. Carlisi and Mr. Singer. For the reasons set forth below, we are writing to you at this time to respectfully request that your Committee withdraw the subpoenas that you have issued, at least for the time being. We note that as of this date of this letter, the 20th, those subpoenas have not yet been personally served on either Ms. Carlisi or Mr. Singer.

To the extent that such request is required by Civil Practice Law and Rules 2304, this letter constitutes a formal request to withdraw the

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subpoenas. This request is made on several grounds," but let me digress for a minute there. The fact of the matter is that Vice Chairman Crecca commenced the efforts to get this witness before the Committee in October or November of last year. We're now at February, we have just begun meaningful, hopefully, correspondence on response to the subpoenas in order to compel the testimony.

Now, almost five months after the beginning of that process, there is pending in our agenda in the packet coming up at next week's meeting a bill to change the way we issue subpoenas, so that this kind of paralysis that is obstructing our going forward in a meaningful way does not occur, not just before this Committee on this issue, but before any other Legislative Committee on any issue.

That law would, instead of requiring a full Legislative action to issue a subpoena, it would permit a majority vote of a standing Committee of the Legislature to authorize the issuance of the subpoena so that it can be done instantly at a Committee meeting and not over a period of months.

"In any event, the first reason for the request, the reason for the request is based on several grounds," I'm back to reading the letter. "As you know, the Suffolk County District Attorney's Office has been conducting a Grand Jury investigation pursuant to the Criminal Procedure Law Section 190.85 (1) (c). The Segal Company has dutifully complied with the subpoenas issued by the District Attorney. It has turned over thousands of pages of its records to the District Attorney investigators and submitted its employees, including Ms. Carlisi and Mr. Singer to personal examination by the District Attorney's Office."

That formally notifies me of what I suspected going on anyway, and based on that notification, I think it's incumbent upon me at least to, to communicate directly with the District Attorney's Office to make certain that nothing we're doing here is in any way interfering with or obstructing anything that he's working on. I know that Chairman Crecca has been in touch previously in the past, it's just that I think that I should touch in. And with the Committee's support, I'll do that alone, unless other Committee members see any reason they want to be present. Hearing none.

"Simultaneously with the County pursuant to its investigation of the Criminal Procedure Law, the County has initiated a civil action in the Supreme Court titled the County of Suffolk versus Segal Company, Index Number, seeking ten million dollars -- tens of millions of dollars of damages of against the Segal Company." One of my Aides please take a copy of this letter and give it to Counsel so that they have it.

"Pursuant to CPLR, the CPLR, the Segal Company exercises its priority for discovery, demands," which I've handed out courtesy of the County attorney's Office, "that the County produce certain documents, contracts, memoranda and other Suffolk County SCEMHP materials pertinent to the Segal Company's defense against the County's claims.

The County was supposed to produce those documents on Thursday, February 6th, 2003. However, instead of being forthcoming as the Segal Company has in its response to the subpoenas by the District

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Attorney, the County made a last minute motion for summary judgment," which has been handed out to you, "which as you know, allows the County to argue that all discovery by the Segal Company is suspended pending the outcome of the County's motion. On that pretext, the County, in fact, is withholding all documents and other materials regarding the SCEMHP requested by the Segal Company."

"From the -- this is Counsel's opinion, I'll read it into the record anyway, "from the outset of the litigation, it was clear it was inappropriate for the employees in the Segal Company to appear before the Legislature to discuss the dispute while a multi-million dollar claims by the County were pending by the State of the Supreme Court. Now, however, it appears that the filing of the County's motion suspending the Segal Company's discovery in that case is an unfair attempt to withhold information from the Segal Company that is pertinent to its defense in the civil litigation, while forcing the Segal Company to subject itself prematurely to oral examination before the Legislature without the benefit of the procedural protections afforded by the CPLR under the normal course of civil litigation.

Lastly, we note the procedures following the Legislative authorizing the issuance of these subpoenas appear to violate the County's own rules for such subpoenas, thus the subpoenas are procedurally defective as well." I'll ask Counsel of the Legislature to address that in just a moment. Let me finish the letter.

"For these reasons, among others, we again respectfully request that we at the Ways & Means Committee at least temporarily withdraw the subpoenas issued to Ms. Carlisi and Mr. Singer. The Segal Company would prefer to cooperate with the Legislature's inquiry if it can be done in a manner that does not subject the Company's employees to questioning prior to the County's production of documents and records regarding the Suffolk County EMHP requested by the company. The company is entitled to the production of these records before giving testimony regarding the County's claims.

However, to that end, we would be pleased to speak with you or members of your staff about a schedule and framework for the appearance by the Segal Company before your Committee that allows a fair procedure for discussion of the facts that are pertinent to your inquiry. I look forward to hearing from you, etcetera. John F. Shea, III."

The first -- the reason I want the Law Department to have the letter is because when we get to it, I'll ask you to respond to some of the statements in the letter.

The allegation -- Counsel of the Legislature, the allegation with respect to the procedures followed by the subpoena, could you address that briefly, please?

MR. SABATINO:
Given the vagueness of the statement in the letter, and given the final paragraph in which they indicate a desire to negotiate the terms of the testimony, I would characterize that particular paragraph as being posturing, because we followed the explicit procedures by passing a resolution delegating the authority of the full Legislature

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to this Committee, and then this Committee by a separate and distinct vote authorized the issuance of the subpoenas and the subpoenas were served by the Deputy Sheriffs from the Sheriff's Office, albeit after what appeared to be an attempt to maybe evade service of the subpoenas.

It's not clear about that, but it appears to be that they were not making themselves readily available for the service, but nevertheless, we've complied with our procedures. I just suspect that they're trying to negotiate how, when and where the testimony is going to take place.

CHAIRMAN GULDI:
The next area -- the next point I was going to raise was the -- again that last paragraph and to discuss among the Committee how we want to respond to this letter and this demand. So, Mr. Crecca, it is time

for you to use the mike since you want to comment on the letter. And I'd like to hear Committee members' opinions about how we should respond at this point.

LEG. CRECCA:
The Segal Company being subpoenaed here is really not related to the criminal investigation and it's really not related to the civil suit, they're coming here to provide information under subpoena to this Legislature regarding what is a governmental need, a governmental problem, a right for the public to have this information.

I have a problem with the letter in the sense that they're saying that what's going on procedurally in the civil matter with the County makes them unable to come here and give testimony. And that may be true in the civil case, that they may be entitled to certain documents before having to be deposed or answer subpoenas there, but it doesn't apply to this Legislature and to this body.

In addition, their claim that there's a criminal investigation going on, we were well aware of that when we issued the subpoenas and there is absolutely nothing that would bar them from coming here. Should they be asked a question and have to give testimony that relates to possible criminal conduct, they have a right then to refuse to answer specific questions, but other than that I see no reason why they shouldn't come here and answer questions.

In the letter, the whole tone is that they've been forthright with information, that they've been providing documents, the fact of the matter is they have not been cooperative and they have not been forthright with this Committee and its predecessor. It's the Segal Company, they shut the mikes off. But they haven't been forthright with this Committee or its predecessor Committee and they haven't been cooperative.

Every letter I've gotten, every contact that I've made with them was a refusal to come before the Committee, and that's the whole reason why we issued the subpoena. So, you know, I find it unacceptable. I find it unacceptable that no representative is here from the company or an attorney on their behalf today.

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Is there anyone here from the Segal Company or anybody from the firm of Twomey, Latham, Shea and Kelley? I find that unacceptable to answer a subpoena when they know it's on. A letter is not sufficient. And that's my position.

CHAIRMAN GULDI:
What do we do about it?

LEG. CRECCA:
Well, the subpoena is a continuing subpoena. If they wanted to quash the subpoena, they would have to make a motion to quash the subpoena, which they have apparently not exercised. You know, I think that -- Counsel, we don't have to issue a new subpoena, just make a new demand.

MR. SABATINO:
The only formal action that would have to be taken, which I would recommend, is that the request on the last page of the letter in the second full paragraph that we withdraw the subpoenas be rejected by a formal vote of this Committee, because that paragraph is exercising one of the technical provisions of the CPLR, which says first you make a request to withdraw the subpoena and then you move to the next stage.

So the only burden that would be on the Committee today would be to respond to that particular paragraph. My recommendation would be at some point in this proceeding to act accordingly by rejecting that request.

LEG. CRECCA:
And I would suggest we do that and that we also issue a statement from the Committee through its Chair to the Segal Company giving them the time, date and place that they're expected to appear. You can talk to Counsel about whether we need to issue new subpoenas, but I don't think we do, and advise them that if they fail to appear, that they'll -- whatever the legal consequences will be.

CHAIRMAN GULDI:
Okay.

LEG. FISHER:
Mr. Chair?

CHAIRMAN GULDI:
Yes.

LEG. FISHER:
With regards to the request and the ultimate paragraph in the letter, which is that they would be pleased to speak with us or members of your staff about a scheduling framework for an appropriate appearance by the Segal Company that allows a fair procedure, it's my understanding, Legislator Crecca, that the Committee that you chaired had had hearings where the County did provide information and answered questions, isn't that true?

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LEG. CRECCA:

Yeah. There were witnesses that appeared at two different hearing dates at both of those, there were a number County, as a matter of fact, most of the County employees who were involved with this testified directly. I'm talking about involved with the Segal numbers and especially the more recent findings.

LEG. FISHER:
And were there documents that you had asked the County to bring to those hearings?

LEG. CRECCA:
Yes. Most of those documents were the ones that were copied and forwarded to Committee members, or at least to the Chair, I think Committee members got those.

LEG. FISHER:
So from our point of view, we have proceeded fairly and this is a fair procedure and --

LEG. CRECCA:
Just so you're clear too, I don't mean to interrupt you.

LEG. FISHER:
Yes.

LEG. CRECCA:
But the Segal Company never in any of their correspondence to me requested that we produce certain documents before they would come, there were never any conditions, it was just an outright they were not going to come because of the pending civil suit. And I did threaten, in the sense of I hate to use the word threaten, but I laid out the fact that we had subpoena power.

LEG. FISHER:
And you made that clear at the last Ways & Means Committee, that you had invited them, that you had said that we would be forced to use our subpoena power. But my point is that we have scheduled, we have provided the schedule and the framework for a fair procedure, which would have been today's meeting, because we have had previous meetings where the County has produced the documentation that was requested and the County has testified and now we're asking for the Segal Company to do the same. So I believe that we should stand behind our subpoena and continue it in whatever legal form it has to be done.

LEG. CRECCA:
And understand too, they have not produced any documents in addition to not coming to testify despite the request to do so on the prior correspondences with them, so --

LEG. FISHER:

So this is a fair procedure?

LEG. CRECCA:
Correct. I believe so.

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CHAIRMAN GULDI:
Yes.

LEG. FIELDS:
What are the legal ramifications for ignoring a subpoena?

CHAIRMAN GULDI:
Counsel?

MR. SABATINO:
It's a misdemeanor, which would be punishable by a fine of up to five hundred dollars.

LEG. FIELDS:
And how long do they have? It's -- the subpoena is supposed to be that they produce themselves I guess today and that once they don't show up today --

MR. SABATINO:
What happens is they invoked the provision of State law and they basically made a request that the subpoena be withdrawn. This Committee, if it votes accordingly later, will reject that. I will then confer with the Chairman in terms of how to construct a letter, but the essence of it would be to communicate back to the Counsel for the two individuals that their request to withdraw has been rejected and setting a new date for them to appear.

They'll have the option at that point then to decide whether they want to comply, negotiate or make a motion to quash the subpoena, which means they have to go to State Supreme Court to make that request.

LEG. FIELDS:
And if they ignore it at that time?

MR. SABATINO:
Well, if they do nothing and we get to the next date and nobody appears and no documents appear, then we would turn it over to the District Attorney at that point, because it would be, as I say, a misdemeanor.

LEG. FIELDS:
Okay. Thank you.

CHAIRMAN GULDI:
On the basis of that discussion, I will make a motion that the Chairman be directed with Counsel to prepare and send a letter informing Counsel to the Segal and Company that the demand pursuant to CPLR 2304 to withdraw the subpoena is rejected, this subpoena is not withdrawn.

LEG. CRECCA:
Second.

CHAIRMAN GULDI:
Second by Legislator Crecca. Discussion on that issue? All those in

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favor? Opposed? That's approved.
(VOTE: 5-0-0-2) (ABSENT: CARACCIOLO, HALEY) APPROVED

CHAIRMAN GULDI:
As far as the time and date certain, I suggest that we, the Committee, confer before we leave here today to seek dates, but we don't necessarily need to do that on the record when we have a room full of people that I want to get to issues with respect to.

The next item that I handed out that I want to discuss with Committee members is there is a VYTRA cover letter with a Fed Ex to myself with a nine-page printout of vendors who have been distributed funds under VYTRA in the last fiscal year. There are two concerns that I have with respect to this list, realizing that I've had more of an opportunity to review it than the rest of you.

Directing your attention to the ninth page of that letter, the sub total for vendors who have been paid less than twenty-five thousand dollars constitutes sixty-four -- excuse me, fourteen million nine hundred thousand dollars. I submit that that, because of the volume of that dollar amount, that I should go back to VYTRA and ask for a supplemental run of smaller vendors down to a smaller dollar amount so that we can verify that, particularly since a number of vendors seem to have -- the top vendor is University Hospital and it receives a very substantial amount, there seem to be scattered throughout the report other affiliated or seemingly affiliated vendors with that hospital.

There are a number of other instances where that occurs, so I think that it's incumbent upon us just as part of due diligence to look at where the money went to look at this further. Is there any discussion or questions with respect to this issue?

LEG. CRECCA:
Just on a side note, since you're talking about VYTRA right now also.

I don't know, one suggestion I would make, whatever day we end up adjourning to a time certain, I think we may want to voluntarily invite somebody from VYTRA down too for the possibility that they could shed some light on these EMHP hearings. It was something that we had discussed doing prior in the Finance Committee, and then with the changing of the guard never got around to it.

CHAIRMAN GULDI:
I certainly think that would be appropriate, and at such time as we can schedule that discussion with them, I intend to do so. Any other discussion on that item at this point? If Committee members, after they review it, want to have additional comments, please give them to me at your convenience and I'll continue to gather information in that regard.

I want to call to the attention of any Committee member who didn't see it today in Newsday, there's an article on the health plan by someone named J. Jioni Palmer. Is Jioni an Italian name? In any event, this article does call to my attention at least some of the documents that were in the packet I distributed to you, the annual reports of Segal and Company are in that packet together with some of the drafts and

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working notes on it and I call your attention as Committee members particularly to the reports during 1997, which highlight the change in the analysis. Any comments on that article by Committee members?

Given that Mr. Greene has articulated a position on this and had a role with the Committee for a number of years, it's foreseeable that we will be inviting him to join us at a future date as well as VYTRA.

All right. Fred Pollert of Budget Review, can you give us an update on the status of the preliminary audit on the health plan?

MR. POLLERT:
The Audit Committee of the Suffolk County Legislature retained Ernst & Young to do an audit that would meet the scope and requirements that were laid out by the Audit Committee. A draft report was prepared for the Committee members in January. There were some revisions to the draft report, I have just received a copy of the final report from Ernst & Young and have distributed copies of the report to the members of the Audit Committee.

The report hasn't yet been reviewed by the Audit Committee. I know that Ernst & Young is in attendance and I would defer to them if they would like to summarize the findings of their report as they did before the Audit Committee.

CHAIRMAN GULDI:

Is there somebody here from Ernst & Young? Come up, please, and identify yourself. Come on down.

MR. DOWD:
Peter Dowd and Heidi Wolpow from Ernst & Young.

CHAIRMAN GULDI:
Hi. Thanks for being here. I realize that the -- that we have not as yet passed an appropriating resolution to compensate you for being here today and I've been advised by Counsel that we need to do that. I don't know that actually if we have the authority to nunc pro tunc it, but --

LEG. CRECCA:
Isn't it part of the existing contract with Ernst & Young?

MR. POLLERT:
The contract with Ernst & Young was to respond to the Audit Committee, not to the Legislature as a whole. I know that they were covering the Committee meeting and I didn't want to comment on the report, because I was not the author of the report, so I would like to defer to them.

CHAIRMAN GULDI:
Yes. So the question -- I would love to find out what's in the report, we do not have copies of it and haven't seen it. I just am questioning whether we have to -- we can do that now or even preliminarily now and at more detail at a later time and I wanted to point out the -- my concern about the engagement and the compensation for doing that. So, Counsel, am I correct that we -- as to the necessary for prior approval for appropriation?

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MR. SABATINO:
Well, for appropriation, yes. What's not clear to me is, response to Vice Chairman Crecca's question, which is whether or not the current contract provides for it. If the current contract provides for it, then you have the authority to take the testimony and getting the funding in place is just an extension of what's already been out there. But if there's a question about underlying authority, then that would be a different issue.

CHAIRMAN GULDI:
Well, you've been covering the Committee meetings regularly as part of the audit, have you not?

MR. DOWD:
Yes. There have been actually I think about two or three hearings that we were asked to come to.

CHAIRMAN GULDI:
So it's probably within the scope of it, but, you know, I didn't want to --

LEG. CRECCA:
Either way you have an assurance that if they need an appropriating resolution, it will happen. Let's just proceed.

CHAIRMAN GULDI:
You're speaking for all eighteen of us now, that's good.

LEG. CRECCA:
Absolutely.

CHAIRMAN GULDI:
Fred.

MR. POLLERT:
I just spoke with members the Audit Committee and they have no problem if I do a distribution of the reports. However, I'll make a distribution to the members.

CHAIRMAN GULDI:
Could you please? Thank you.

MR. POLLERT:
Yes.

CHAIRMAN GULDI:
And could you tell us what's in the report that we haven't seen yet?

MR. DOWD:
The report --

CHAIRMAN GULDI:
Summarize it.

MR. DOWD:
The report really is just an update from the draft report that we had

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issued I believe it was on January 10th. The content of this final report is very similar, I don't really think that there are any material differences in our findings with the preliminary report.

LEG. CRECCA:
Can you share those findings with us? I'm sorry, George.

CHAIRMAN GULDI:

Go ahead.

(LEGISLATOR CARACCIOLO ENTERED THE HEARING AT 12:15 P.M.)

MR. DOWD:
Sure. Yeah, I mean just briefly what we were asked to do and the analysis that we focused on were historical calculations performed by Segal relating to the cost comparisons between the County's medical plan and the New York State Empire Plan Medical Insurance Program. So the entire analysis was really to identify what, if any, kind of errors were made when Segal actually calculated hypothetical costs had the County stayed in the Empire Plan.

And we did find that there were certain miscalculations that were made back in the 1995, '96 time period and forward and that those calculations appear to -- or those miscalculations appear to happen based on the fact that the Empire Plan at that time changed from what we call a two-tier rating structure to a five-tier rating structure.

The report specifies what we found in terms of the mistakes that we feel were made in miscounting a lot of the enrollment and moving that enrollment into the Empire Plan five-tier rate structure. So it gets into a lot of detail on how we feel that those miscalculations were made, which in essence caused the hypothetical Empire Plan costs to be much greater than they should have been.

LEG. FISHER:
What's the magnitude of those miscalculations?

LEG. CRECCA:
Go ahead, Vivian, that's a very good question.

LEG. FISHER:
What is the magnitude of those miscalculations, sir?

MR. DOWD:
There was a -- as a part of it, there was an over-count of approximately I believe it was about four thousand lives. And just to look at any one year in particular, for instance, just picking the year 2001, the original Segal calculation prior to the revisions that they themselves made in October of 2002, showed hypothetical Empire Plan costs of approximately a hundred and thirty-nine million, their revised analysis corrected I think most of the issue, brought that number down to a hundred and nineteen million. Our calculation based on some information that we were able to get with all of Suffolk County's help showed that number to be about a hundred and seventeen million.

We actually followed those miscalculations back to around '95, '96, when the problem seemed to happen because of the change from a two-tier to a five-tier structure. And just following through on that, in the year 2000 they had calculated about a hundred and twenty-two million, where we recalculated it to about a hundred and two million. 1999, their calculation was a hundred and six million, our calculation was about eighty-nine million. '98, the difference was about ninety-nine million versus eighty-two million. '97, the difference was ninety-three million versus seventy-eight million. And then back prior to '97, we found that their calculations were essentially very close to ours.

LEG. CRECCA:
Question for you, though, on the -- there was double counting obviously that was going on and that's what caused the miscalculations, correct?

MR. DOWD:
That's part of it. That is the lion's share, that is most of it, although not all.

LEG. CRECCA:
What I don't understand is how the Segal Company, you may or may not be able to answer this question, how they were double counting, but at the bottom line had the right number of employees in Suffolk County. That to me is, I mean I'm certainly not an accountant and I certainly can't even balance my checkbook, but that is like such a glaring error that it makes one wonder as to how an accounting firm can make such a blatant error like that.

And I guess my question for you is, is there any -- is there any I guess explanation within general accounting principles of how such a discrepancy in that number could come about?

MR. DOWD:
No, I wouldn't say so in general accounting principles. It looks like, as I said, when they attempted to change from a two-tier to a five-tier structure, they did appear to try to move lives into the appropriate tiers, but it seems like they forgot to remove those four thousand lives from the original two tiers, and I don't know any general accounting principle that would govern that.

LEG. CRECCA:
And just understand, though, the bottom line number of the total employees came out right, though, at the bottom, which that's what really is boggling, because the -- based on their calculations, you would have had to see drastic increases in the amount of employees literally almost overnight.

MR. DOWD:

You know, there were a couple of calculations, more than a couple, that I believe they were being asked to make over the years. One of them was this hypothetical calculation of what the County's costs would have been had they stayed in the Empire Plan, and that seems to be the one that's got the problem.

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There were other calculations that were completely outside of this Empire Plan comparison, which was just to try to estimate and then later reconcile the actual County costs in your own sponsored plan, and there did not seem to be a problem with those calculations or, you know, the enrollment that was used in those calculations.

LEG. CRECCA:
So basically what they said we were spending on their audits, we were actually spending on our own self-insurance plan.

MR. DOWD:
It looked like they did a good job of that number, it's just this Empire Plan hypothetical calculation that seemed to go wrong.

CHAIRMAN GULDI:
Mr. Chairman, can I ask a question.

LEG. CRECCA:
I'll defer to Chairman Guldi.

CHAIRMAN GULDI:
Thank you. You're next after me, David. All right? One of the things that the Newsday article, I don't know if you've had a chance to see it today, seems to highlight, it basically it takes off from the principle that as of 1997 we knew that our actuals were above what they would have been if they -- if we were in the Empire Plan, but that the plans were substantially different by that point.

Also, there's a statement by Dave Greene that indicates that we knew that there was -- let's see, that cumulative extra costs to taxpayers from '95 through '97 would be 21.4 million dollars. My question to you is kind of a, sorry, multitiered, you can never get away with this in a Courtroom, but we're in the Legislature so I can do it question, which is, how do you possibly reconcile those projected cost figures with the actual costs for the years reflected in the annual reports and did you find any documents in the course of your review that seems to support this discussion of cumulative savings or twenty-one million dollars or any of that ilk?

MR. DOWD:
You know, again I'll try to comment on that. Again, one of the things before we even started our analysis was to make sure that we

understood exactly what was in the scope of our review. One of the things that I had asked specifically was whether this review should also spend time identifying the difference between Segal's estimate of actual County costs and the actual outcome of those costs. And the answer was no, that the -- that the only thing that we should be concerning ourselves with was what went wrong in this hypothetical calculation of what our costs would have been had we stayed in the Empire Plan.

So, we really did not get into and I can really not comment on what kind of errors could have caused or what could have caused the difference between projected actual County costs and, you know, the costs in hindsight. It was really just to look at this Empire Plan calculation.

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CHAIRMAN GULDI:
So you didn't really look at the actual costs to see what the dissidence was between them and the projections?

MR. DOWD:
Oh, we did. We absolutely looked at the actual costs, but again we didn't focus on what went --

CHAIRMAN GULDI:
But you didn't try to reconcile those costs with what the -- with the projections, is that what you're saying?

MR. DOWD:
We basically provide in this report what the actual costs were and what they are each year to what that Empire Plan calculation had been, but we really did not get into, you know, why, for instance, actual costs have gone under budget or over budget.

CHAIRMAN GULDI:
I see. I see. But the budget being prepared on the projection numbers?

MR. DOWD:
Right.

CHAIRMAN GULDI:
Okay. One of the questions I have is the, it's the apples and oranges question. I see that you do, while I've just glanced at your report, you do substantial portions of the report comparing the benefits under the Empire Plan versus the benefits and deductibles under the Suffolk plan.

My question, though, is it's come to my attention that we have a number of other items in the Suffolk County health budget that are not strictly benefits to individuals. I've been informed, although I haven't really reviewed this with Budget Review, that over the years we have folded into the health plan the costs of a number of employees from Risk Management, we folded into it a couple of million dollars a year worth of education programs. Is that correct, Fred, do you have these figures or am I off base or am I blindsiding you or both?

MR. POLLERT:
I think a little bit of both. The fund does include the cost of administration both on the part of VYTRA as well as County employees that do the operation of the funds. I'm not aware of what the individual components of the VYTRA expenses are with respect to education. I have no idea if there's an education component that's being funded through the VYTRA Management Program. The Budget Review Office did not receive that type of detailed budget request or budget data from the fund.

CHAIRMAN GULDI:
Well, let me ask the question this way, if the Empire Plan -- if the Suffolk County Medical Health Plan is carrying several million dollars worth of other expenses that would not be replicated in the Empire Plan, would that change your analysis at all or did you find any

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evidence of that and did you look for it?

MR. DOWD:
Yeah. I mean actually, I believe it's in the appendices in the back of the report. We provide all of our assumptions, including trying to identify the effort that we took to keep apples to apples in terms of stripping out some of the extraneous costs that either would not have been carried -- would not have been provided by the Empire Plan, but that the County may still have spent money on. So things like consultants expenses, Medicare Part B reimbursements, we tried to pull those out of both sides of the equation so that we are able to provide a pretty good apples to apples comparison of just claim costs and the costs associated with administering those costs and adjudicating the claims.

CHAIRMAN GULDI:
Okay. So you did make an effort to pull those expenses out and they're in your appendicis to the extent you identified them and pulled them out?

MR. DOWD:
Right. You'll fiend those in the appendices. You'll also find right in the body of the report, on page 12, we identify exactly what costs are included in both sides of the equation. And so those include

major medical claims, hospital claims, prescription drug claims, managemental health claims, administration fees paid to the providers, the claim adjudication fees and the health-- and the use of health insurance program consultants and miscellaneous that we felt would be still useful whether you were in the Empire Plan or not.

CHAIRMAN GULDI:
Okay. Legislator Bishop, you're up. Thank you.

LEG. BISHOP:
Thank you. Good afternoon. Thank you for attending. As to the lion's share of the discrepancy costs, it was caused by a single factor error, right, this miscounting, double counting of the number of bodies, is that an error that occurred one time or does it occur multiple times?

MR. DOWD:
It occurs multiple times.

LEG. BISHOP:
Does it -- you have a background in this area, does it surprise you that it would occur multiple times, is it the type of thing, this is a qualitative question, not a quantitative question, is it the type of thing that should be caught each time it's occurring?

MR. DOWD:
Yeah. I mean I believe that there was a mistake made that caused a, you know, a significant overstatement in hypothetical Empire Plan costs, I do believe that should be caught. It clearly was due to the complex change in '95, '96, between two-tier and five, but to continue to carry that same error year in and year out to me is unusual.

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LEG. BISHOP:
As to alarm bells, were there -- outside of the counting of the bodies, when the plan watches the cash flow and the consultants and the professionals are looking at the cash flow, is that a valid alarm bell to this question? Because it's my understanding that the cash flow and the plan diminished precipitously after about 1998, is that correct?

MR. DOWD:
As we mentioned before, as far as the, you know, the actual Suffolk County medical plans estimates and following the cash flow, it doesn't look like that was a problem that Segal had. They did seem to reflect the correct number of lives and actual claim payments with respect to how the actual Suffolk County medical plan was going.

The problem, as I said before in this miscounting or double counting of lives, seemed to happen only in this calculation of these hypothetical Empire Plan costs, and for some reason that did not fortunately carry forward to their budget process and their forecasting of your actual claim costs, it's just in this one --

LEG. BISHOP:
So it was only when they were considering the policy questions, not with the actual implementation of the dollars in the plan?

MR. DOWD:
Yeah. It was just this calculation of hypothetical comparative Empire Plan costs and it didn't seem to carry forward anyplace else.

LEG. BISHOP:
With this hypothetical calculation, an expansion of plan benefits was justified and there was a series of expansion of benefits, that's correct, would you know that or that's outside of your --

MR. DOWD:
I can only tell that you I know that there were changes made to the plan that were told to us over the years. I'm not sure, I think some of those were increases, some could have been decreases, but there were changes made I believe almost every year to the County plan.

LEG. BISHOP:
I guess perhaps you're not the right person to ask this, but what I'm trying to get at is the changes made, the expansion in benefits, was the plan getting its monies worth with those? Was the plan still being, or was it being efficiently run even given that it was taking -- giving out more benefits.

MR. DOWD:
I don't think I can comment on that, that just wasn't the focus of our study.

LEG. BISHOP:
Okay. Thank you.

CHAIRMAN GULDI:
Legislator Fisher.

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LEG. FISHER:
I'm over here. I'm trying to reconcile some of the figures that you had mentioned earlier with the figures that I'm looking at in Appendix B, and I'm not certain that I'm looking in the right place. You had mentioned, for example, that in 1997, Segal had reported the cost of Empire to be ninety-three million and in your figures that would have been seventy-eight million with a difference of fifteen million

between your figures and Segal's. But that's not reflected on page 3 of Appendix B, am I looking at the wrong figures in your report?

MR. DOWD:
Page 3 of Attachment B?

LEG. FISHER:
Attachment B, yes.

LEG. CRECCA:
Attachment be or appendix?

LEG. FISHER:
Attachment B, I'm sorry.

MR. DOWD:
Right. Well, as I said, if you're looking back on Exhibit One, the 1997, there were actually three figures that we tried to show in most of these years. There was the original figure that Segal had calculated of hypothetical Empire Plan costs, which was ninety-three million.

LEG. FISHER:
Where I would find that in the report?

MS. WOLPOW:
That would be Attachment A.

MR. DOWD:
Attachment A.

LEG. FISHER:
Attachment A, okay.

MR. DOWD:
And then I believe in October of 2002, Segal redid their calculation, which we're referring to as the middle figures in Exhibit One. In that, the revised Segal analysis was 79.6 million -- I'm sorry. Yes, 79.6 million.

MS. WOLPOW:
If you look at what you're -- you're looking at that page 3, it's not that bottom line. I'm not sure if you're referring to the 84.8 million.

LEG. FISHER:
I'm looking at the bottom line on page 3 of Attachment B was seventy-seven million two hundred and sixteen thousand.

MR. DOWD:
That's '98.

MS. WOLPOW:
'96.

MR. DOWD:
'96.

LEG. FISHER:
Eighty-four million is '97, right, the Empire Plan, eighty-four million eight hundred fifty-one thousand.

LEG. FIELDS:
Can you use the microphone?

MS. WOLPOW:
That's including items such as Medicare reimbursement and HMO reimbursement.

LEG. FISHER:
Okay. So the subtotal is what you're looking at?

MR. DOWD:
Right.

MS. WOLPOW:
Right.

LEG. FISHER:
That seventy-nine million.

MR. DOWD:
Right.

LEG. FISHER:
Okay. So, looking at those figures, the seventy-nine million Empire Plan in '97, what were your figures for that total?

MS. WOLPOW:
78.3 million.

LEG. FISHER:
Yours was 78?

MR. DOWD:
78.3, yes. Seventy-eight million three hundred and fifty-two thousand.

LEG. FISHER:

Okay. But these are not the figures -- I'm getting a little confused about the difference in the figures. You had mentioned a ninety-three million dollar figure, that was the original figure that was the --

MR. DOWD:
Original Segal figure.

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LEG. FISHER:
Original figure that the Segal Company had come up with?

MR. DOWD:
Correct.

LEG. FISHER:
Okay. And so these revised figures are yours -- they're Segal's?

MR. DOWD:
Segal also came up with a revised set of figures, which is shown in the middle column of Exhibit One, page 5 for 1997. At that point they came up with 79.6 million. We still feel that there were some minor errors that continued to exist in that recalculation. And so based on that, we came up with a figure of 78.3, much less of a difference, but we still felt that there were some minor miscalculations even in Segal's updated report, much more minor in nature.

LEG. FISHER:
Okay. Thank you.

CHAIRMAN GULDI:
If I may, I've got a couple of more questions. First of all, just in terms of your backgrounds, I understand that you are both full actuaries. Now, as a member of the Legislature and as an attorney, the only thing I know about actuaries is the great insurance joke about what happens when you put the salesman, the underwriter and the actuary in the car together? The salesman has his foot on the gas, the underwriter has his foot on the brake and the actuaries are looking out the back window to see where we're going. Tell me what an actuary does exactly besides look out the back window.

MR. DOWD:
Actuaries have very different functions, depending on whether they're working for insurance companies, consulting firms, whatnot. So, we're actually working for an employee benefits consulting firm, and as actuaries there we're qualified in advising clients on budget estimates, on what the prospective or future costs of medical plans, for instance, would be. Also helping them to come up with alternative plan designs, if and when there's an increase in trying to, you know, more significantly control costs.

And so we spend a lot of time analyzing plan designs and the underlying finances of these plans so that we can project forward, reconcile backward and come up with suggested alternatives when costs get out of hand.

CHAIRMAN GULDI:
But all of that is from the simplistic perspective of an advanced certification for a CPA, is that what actuaries are, or is there a different discipline or study?

MR. DOWD:
No. We're not in the auditing profession at all other than the fact that we work for Ernst & Young, which is an audit and accounting firm.

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CHAIRMAN GULDI:
Okay. That clarifies it. One of the things that you talked about before, I think it was in response to Legislator Bishop's question, the scope of your audit, or it might have been mine, and I asked Counsel a pull the resolution authorizing the audit because of what I thought was dissonance between what you told me was the scope of the audit and what you -- and what this resolution says.

So before I even go to the language in the resolution, is there a written document that was provided to you defining the scope of your audit?

MR. DOWD:
Yes.

CHAIRMAN GULDI:
And what form, do you remember what that document was?

MR. DOWD:
Well, there were actually several documents. There was a document that I believe is just a letter that identified after we had a preliminary meeting where it was decided at least verbally that our focus should be specific to the Empire Plan calculation that Segal had done. I know that there was some difference between an initial resolution that was made and the actual letter of understanding, but we were asked by the Audit Committee to limit our focus to the miscalculations with respect to the Empire Plan findings.

There's also going to be a phase two, which we're going to be doing after this, which we refer to as well in our report, which really gets at a prospective look at what kind of things you can do in the future to avoid this kind of a miscalculation from happening or from happening over a long period of time.

CHAIRMAN GULDI:
All right. But in connection with that phase two, now that I've raised this both of the sponsors now have further questions on it.

LEG. BISHOP:
No.

CHAIRMAN GULDI:
That phase two, will that phase two complete the scope of the audit as defined in the resolution or is it still somehow limited by the letter of understanding? Fred, you look like you're ready to answer this question.

MR. POLLERT:
Right. The scope of the work that was authorized by the Audit Committee was defined by a work plan that was come up by Ernst & Young. The Audit Committee defined what we were specifically interested in looking at, the consulting firm came up with a work plan, that work plan was approved by the Audit Committee.

There was recently a modification to the work plan with two alternatives, actually, four alternatives to expand the scope. At the

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last meeting of the Audit Committee, it was decided not to expand the scope. One of the concerns was the comparison between the actuals versus the numbers included in the budget. It was the belief of the Audit Committee that we could come up with that type of data ourself. And basically what we would be doing is reporting the data to the consultant, which would then be turning around to re-present the data back to the County.

So, the County Executive's Office has already started to come up with a spreadsheet with a comparison between the departmental request, Segal's recommendations with respect to what should be included in the budget, the Budget Review Office's recommendations, what the County Executive put into the budget and what the actuals were.

Likewise, as Chairman of the Audit Committee this year, I sent a memo to Ernst & Young, the accounting group that actually certifies the books and sent them a copy of the resolution as well. It's their estimate to do a complete claims review would cost in excess of one million dollars. However, they believe that the numbers that they certify and review were accurate with respect to what the actual expenses are.
Therefore, it comes back to a Legislative intent, what is the Legislative intent with respect to an authorizing resolution if it's to insure and get an assurance that the numbers presented in the

budget are, in fact, accurate with respect to what the actual expenses are, Ernst & Young believes that their independent audit that they perform on an annual basis adequately can guarantee or assure that those expenses are complete and accurate. If you want an actual claims audit, the cost would be in excess of one million dollars.

The Audit Committee has requested that I write a letter to the Legislators requesting a clarification of the Legislative intent, whether or not the annual audit meets the requirements of the Legislators or whether or not we should incur a one million dollar expense to actually do a complete claims audit.

CHAIRMAN GULDI:
Okay. I understand your concern and you understand that in this instance I thought between the scope of the resolution and what I was hearing, I think that we, the Committee, need to clarify that and as it's resolved, I'd like to, with you as Chair of the Audit Committee, I'd like to be kept in the loop on it. Because, for example, the County Executive is preparing the spread sheet and then providing it to the auditors, does that give the auditors audited numbers or does it give the auditors unaudited numbers to try to discern conclusions from?

MR. POLLERT:
Basically what we would be doing is providing the same data that was provided to both the County Executive's Office as well as to the Budget Office with respect to what the departmental estimate was, what Budget Review Office said, what Segal said it was going to be and then what the final numbers that were certified by Ernst & Young were. So, the thought of the Audit Committee was that we could prepare that type of data for the Legislative Committee in house, which would be a comparison between what was in the budget versus what the actual

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expenses were.

CHAIRMAN GULDI:
Okay. Thank you. Since Legislator Bishop is talking, we'll give it to Legislator Crecca.

LEG. CRECCA:
Just on this point, two things I just want to clarify for the record also. Originally when that bill was passed, there were preliminary discussions between myself and Budget Review, and I believe those were shared with the Audit Committee, that the scope may be rather broad and that we may have to look at it and try to tighten it up.

More importantly, understand that it was verbally requested of the Audit Committee too that it would have to be done in phases and that this phase, which was just completed, be done as quickly and expeditiously as possible and that this would be the first phase, because we felt that the focus of the hearing was on this comparison of the Empire Plan with the EMHP numbers and that's why we -- that's why you're seeing it probably in this format, a result of both the Audit Committee and the Legislature wanted this part first. And what Fred has just brought up and was brought up earlier too, to Fred's defense.

CHAIRMAN GULDI:
Okay. Thanks. Legislator Bishop is next.

LEG. BISHOP:
Thank you to our auditors. I don't know if you saw today's newspaper article?

MR. DOWD:
I have not yet.

LEG. BISHOP:
I'm going to read to you and into the record the first three paragraphs and a copy will be passed to you.

CHAIRMAN GULDI:
One of my aides will bring you a copy.

LEG. FIELDS:
I have it. I have the original.

LEG. BISHOP:
"Health-Plan Call Questioned" is the title, sub title is, "Records show Suffolk knew self-funding was pricier, but still kept it."

"Suffolk officials knew for three consecutive years that the County's self-funded health program was more expensive than a State alternative, but in 1997 opted not to switch when given the opportunity, a review of County records shows.

Suffolk officials had earlier been told that the Suffolk insurance plan was 5.6 million dollars more expensive in 1995 than the State's Empire Plan and that in 1996 it had cost 8.9 million dollars more than

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the State plan. In October of 1997, when the County passed up a chance to switch back to the State plan, the cost for that year was projected to be 6.9 million dollars more expensive.

The growing gap between the two plans was detailed in the annual report given to the County by the Segal Company, a consulting firm.

It was discussed at an October 17,1997, meeting of the eighteen member Board that administers the County's self insurance plan, the meeting's minutes show," and the article goes on.

The first paragraph -- on page six of your report, and I haven't had a chance to read the report, I went right to the conclusions and findings, your very first paragraph on page six is quote, "based on information supplied to us by the County, including reports and back-up calculations by Segal over the years, it appears that the changes made to the Empire Plan rate structure in 1996 were not accurately reflected in the cost comparison provided by Segal to the County and subsequent to those changes. In fact, even in Segal's October 2002 report, Attachment B, within which Segal attempted to update these historical calculations, there seems to be inaccuracies regarding the Empire Plan rate structure."

It would seem that the two, that the article and the report are not reconcilable. Do you have any comment on that?

MR. DOWD:
No. I haven't really read the report yet, but --

LEG. BISHOP:
The article.

MR. DOWD:
Again, I can see right away that there could be some misunderstanding here, because again what we're trying to focus on and only focus on is the difference in rate structure and not the difference in plan design. And I think maybe the article in the paper starts referencing changes in the plan design as well.

LEG. BISHOP:
But plan design, because plan design was based on rate structure or on cost, if not rate structure.

MR. DOWD:
When I say rate structure, I mean again the Empire Plan for many years, even before it was called the Empire Plan, used to be a very, very simple rate structure, where it was just an individual or a family, regardless of whether, what age they were, whether they were active or retired. And finally in around '95, '96, they attempted to, you know, add a level of complexity that they really should have for a long time, and that's by going to this five-tier rate structure, and that's what seemed to have precipitated a lot of the problems.

LEG. BISHOP:
How about in 1995? Because the gist of the article, the essence of the article is that Segal told the County and the County knew, the EMHP knew that the self-insurance plan was costing more than the

Empire Plan, and the first paragraph, if I'm understanding your first paragraph, just is the County didn't know all the facts because Segal provided that information. And I don't -- and so I'm trying to understand that.

MS. WOLPOW:
Segal --

LEG. BISHOP:
Do you think that perhaps Newsday had information that you didn't have access to or do you feel that you had this information?

MS. WOLPOW:
I think Segal's information was correct until 1997, that's when the mistake appeared. So if you look year by year, '95 is okay.

LEG. BISHOP:
So 5.6 and 9, so 14.6 million of the discrepancy is not attributable to Segal?

MS. WOLPOW:
The 5.6 million that they talk about, I mean we're saying the difference is 5.9 million, so I'm fine with that.

LEG. BISHOP:
Yes.

MS. WOLPOW:
The second number, I'm not sure that -- what is it, 8.9 million, we're saying it's a difference of 4.7 million, so I guess I'm not sure where those numbers are coming from, but I don't believe Segal made a real error until 1997.

LEG. BISHOP:
Okay. And you do believe -- okay. Segal didn't make an error until 1997, and they had revealed in their documents and presentations prior to the error these discrepancies, the 5.9 you believe in 1995, and 4.8, was that the number you said in 1996?

MS. WOLPOW:
I don't know if it's a discrepancy, it's just a cost of the EMHP compared to the hypothetical Empire Plan costs. I wouldn't call it a -- I mean --

LEG. BISHOP:
It's discrepancies --

MR. DOWD:
Their calculations were showing that there was a difference even back then.

LEG. BISHOP:
Additional cost, I should say. How's that?

MR. DOWD:
Yes.

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LEG. BISHOP:
And those additional costs were revealed.

MR. DOWD:
Yes.

LEG. BISHOP:
Okay. Thank you.

CHAIRMAN GULDI:
Legislator Caracciolo.

LEG. CARACCIOLO:
Thank you. Mr. Dowd, based on your review, your audit, and in your judgment, when did things go awry, and if they did, in fact, should there have been bells and whistles, alarms, red flags by those who are familiar with these types of activities, particularly the actuaries, and what year would that have been?

MR. DOWD:
Even though the rate structure changed I believe in 1996, it appears that the calculations that were done in '96 were pretty close to the correct numbers. 1997 is when the numbers seem to deviate very substantially. And again, as I said before, I do believe that that should have been caught, again, I think just as, you know, as an actuary's work should be checked and double-checked. There was a significant error, I don't think that anyone is arguing about that, and so that error I think should have been caught a lot sooner than it has been.

LEG. CARACCIOLO:
And whom should have been in a position to identify the error?

MR. DOWD:
I think it could have been any one of quite a number of people. I think Segal themselves, I think if VYTRA had been asked to do some reconciliation, I do not know if they were, it's possible that they might have been able to provide input. So again, the -- this was a

hypothetical calculation that had really nothing to do with the actual Empire Plan costs, so, you know, it was VYTRA, did VYTRA need to be completely cognizant and understanding of the change in the Empire Plan rate structure? I would say maybe not, that's not a plan that they have anything to do with.

So, I do believe that again, you know, the first level of peer review and in being able to catch that kind of an error probably rests with Segal.

LEG. CARACCIOLO:
Based on my limited review of the documents that I've been provided, I'd like to make some comments and perhaps if you went into these areas, you could also comment. Segal, Segal Company annual audits begin in October of 1996, and the annual audit for the year ending December 31, 1995, Segal said their operating expenses exceeded income by, I'm sorry, by eighty three million, 83.3 million to 80.1 million dollars, a deficit of approximately 3.2 million dollars. Does that

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seem right to you?

MR. DOWD:
Just based on the all the information that we received, and again that has nothing to do with the Empire Plan costs, that just is a, I think a retrospective review of what had been originally projected and budgeted versus the actual claim payments and administrative expenses, that sounds about right.

LEG. CARACCIOLO:
As part of your review, how far back did you go?

MR. DOWD:
It was around '95.

LEG. CARACCIOLO:
Okay. Because in 1994, Segal -- Segal reported income exceeding expenses by over ten million dollars. Are you familiar with that?

MR. DOWD:
I don't believe that we had information prior to '94, that type of information.

LEG. CARACCIOLO:
How would that surplus, if you will, have been treated, is there somewhere in the accounting of the fund, the administration of this program where those funds would have been part, Fred?

MR. POLLERT:

The fund balances that were generated by the fund would have remained in the fund and would have been used as an offset to lower the contributions the following year. The fund had rather substantial fund ambulances from its inception in '92, it started about a 3.5 million dollar fund balance, dropped to seven hundred thousand dollars in '93, jumped to fifteen million dollars in '94, ten million dollars in '95, fourteen million dollars in '96, and 13.4 in '97.

Beginning in 1998, the funds started to run deficits, primarily because the amounts included in the budget were insufficient to meet the expenditures. The fund has run deficits in '98, '99, 2000, 2001 and 2002 estimated at this point in time.

So in the early years, there were fund balances. The budget that was adopted by the Legislature and recommended by the County Executive tended to over estimate the amount of revenues required to meet the expenses of the funds beginning in 1998 as kind of a chronic problem. The funds included in the budget were insufficient to meet the expenses of the fund.

LEG. CARACCIOLO:
Okay. Mr. Chairman, I have some notes that I want to verify based on my reading of various documents before I comment on them publicly, but if some of these are substantiated, it would appear to me that clearly there were warning signs of a danger ahead at a time when corrective actions could have been taken, but first I want to give an opportunity to those involved to verify some of this information.

If it is substantiated, then I think we might be dealing with one of two realms here. The first comes down to is whether Segal, that's Segal Company, admitted error in inflating the number of eligible employees, which obviously that did not happen based on what I heard earlier today. The eligible number of employees was not an inflated number, that was a constant number, Mr. Dowd, you said, right, there was no mistake there?

MR. DOWD:
No. It looked like all the numbers that they used to actually do their forecasts of actual County costs were correct.

LEG. CARACCIOLO:
Okay. Because clearly, if the numbers were inflated, then there would be real cause for concern here as to why an actuary would engage in such a practice. So let me stop there, because I think further review now of your report, which we just received, as well as some documents I'd like to go over with the members of the Committee, to make sure that the numbers I have in my possession are, in fact, accurate.

Mr. Chairman, at this time if you could cast my vote with the affirmative on the Committee, I understand earlier there was a motion, which was unanimous.

CHAIRMAN GULDI:
We'll accept your motion to reconsider the motion. It was my motion to refuse to withdraw the petition -- the subpoenas as requested by the letter from Counsel. I'll second the motion to reconsider it. All those in favor -- opposed -- it's now before us unanimously. On the motion to approve, all those in favor? Opposed? It's now unanimous.

LEG. CARACCIOLO:
Thank you, Mr. Chairman.

CHAIRMAN GULDI:
Legislator Fields.

LEG. FIELDS:
Are you -- do you have a memorandum dated July 16, 1998, from Lawrence Singer, Elizabeth {Barneer}, to Committee members, Employee Medical Health Plan of Suffolk County Annual Report for the year ended December 31st, 1997?

MS. WOLPOW:
I think we have that.

LEG. FIELDS:
Do you have it in front of you? I mean do you have it with you?

MR. DOWD:
I don't believe we do.

LEG. FIELDS:
I guess I'm going to ask if you'll recall then on maybe page -- it's not numbered, the third page in, it says page two, did you get what we

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got, were there sticky notes on top of it, it looks like a copy of one of those Post-it notes?

MS. WOLPOW:
I'd have to look back at our copy, which is in the office.

LEG. FIELDS:
I'll read it to you, maybe it will ring a bell. It's a note and it says, "Oscar, I think the time has come to stop comparing us to Empire, it's been long enough and there are significant benefit changes." That's the top note. Bottom note says, "Oscar, I think the

Empire Plan numbers are not correct, please review them and let me know what you think." And it's signed by Phil.

MS. WOLPOW:
That doesn't sound familiar, but again I'd have to look at my copy.

MR. DOWD:
The only -- we were not expecting actually to even be called up today, so we don't have everything. The only report that I happen to have with me is probably a year off. This was from Lawrence Singer to Committee members dated October 19 of '99, annual report for year ended December 31st, '98. That's not the report you're referring to, correct?

LEG. FIELDS:
No.

CHAIRMAN GULDI:
Actually, if I may? She's looking at a July 16, '98, draft of what was the '97 report?

LEG. FIELDS:
July 16, 1998.

CHAIRMAN GULDI:
Yeah. And if you look at the -- actually what I found more compelling is if you look at the August draft of the report, the cost comparison is deleted from the next version of the report after these two Post-its appear on the one on the file.

MR. DOWD:
That doesn't sound familiar. We'll have to go back and see what we have for that day.

CHAIRMAN GULDI:
If you don't have that, contact my office and we'll provide you with a copy of it, or actually I believe -- Budget Review did you get a copy of the book? Counsel has a copy, so it's here in the building or available through my office. Legislator Fields, are you done?

LEG. FIELDS:
Yes.

CHAIRMAN GULDI:
I only have one more question, and I want you to clarify the --

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something you said in terms of the cost comparison. You talk about Suffolk County's actual figures versus what you called a hypothetical

Empire Plan cost. Why is it a hypothetical Empire Plan cost and not a calculable Empire Plan cost?

MR. DOWD:
We only call it hypothetical, because, in fact, you were not a part of the Empire Plan that year, so that I believe the agreement that you had is that you would take the number of employees who elected into your now self-insured EMHP, which would not include the employees who elected into HMO's and you would take the enrollment each year in your self-insured plan, move that enrollment into the Empire Plan's rating structure --

CHAIRMAN GULDI:
And pay a premium.

MR. DOWD:
And that's why we're calling it hypothetical, because you weren't actually in that plan for those years.

CHAIRMAN GULDI:
All right. But once you do that, the premium cost of the Empire Plan for that year are accurately calculable and not hypothetical.

MR. DOWD:
Correct.

CHAIRMAN GULDI:
It is the model that's hypothetical, not the cost that's hypothetical.

MR. DOWD:
That's correct.

CHAIRMAN GULDI:
Okay. That's the only clarification I need. Thank you for giving us this time. If you have more information you care to bring to our attention at any time, please do so. If you need any information or assistance from the Committee, please call us.

MR. DOWD:
Thanks.

MR. GULDI:
Okay. Next on our agenda, Mr. Cabble and Mr. Sklar, if you will join us at the horseshoe to talk about the Suffolk County, actually the Suffolk County -- the litigation called County of Suffolk versus the Segal Company. Since we are in active litigation, what I will ask you to do on the record before we go, adjourn to executive session, is to briefly summarize the contents of the public documents that are filed in the court record, beginning with the complaint, the answer, the

discovery requests and the motion that you have made.

I will ask you to not discuss tactics or litigation or risks or any of the privileged areas during the public session. When you feel that

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you've -- when you get to a point in you presentation you feel it's necessary to discuss those matters, we will take a motion at that time.

With respect to questions during this proceeding, if your question does not begin with, "what does the document say," I ask you, Committee members, to hold that question until we are in executive session, because you will not be able to get a full answer to your questions other than what's contained in the documents during this portion. Whoever wants to start.

MR. CABBLE:
Well, I guess as far as what's public right now would be all of the exhibits that are attached to the motion for partial summary judgment, and those exhibits consist of the pleadings, that being the complaint that we filed, the answer that Segal filed in response to the complaint and then a series of documents that we rely upon in making the motion for partial summary judgment.

The complaint asserts four causes of action. One is for breach of contract, the second is for negligence and the last two are for actual and constructive fraud. Segal has denied all of those causes of action, of course. And our complaint references a fair number of documents, including the contracts that the EMHP Committee entered into with Segal to provide the benefits consultants and actuarial services. And some of the comparison tables that Segal provided to the Committee during the course of the years, and interestingly enough, a good number of those documents are denied by Segal in their answer even though they're Segal's own documents.

A motion has been filed, we have not yet received a response from Segal. Their attorneys recently called us asking for an extension of time within which to answer the motion. The return date now I believe is in mid March.

CHAIRMAN GULDI:
Well, with respect to one question, the motion for summary judgment is a typical summary judgment motion alleging that there is no question, bona fide question as to any material fact --

MR. CABBLE:
That's correct.

CHAIRMAN GULDI:
Is it not? I haven't looked at the papers, but I presume --

MR. CABBLE:
The motion is addressing only two causes of action, one is the contract action and the other is the negligence action. As you know --

CHAIRMAN GULDI:
Okay. I was wondering how you make a summary judgment motion in connection with a fraud allegation, that's why I was --

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MR. CABBLE:
Right. We did not, because, as you know, that's generally speaking, something that can't be made until after full discovery, but a contract claim generally is limited to the four corners of the instrument and that is ordinarily a question of law for the Court, so we thought it was an appropriate motion to make.

CHAIRMAN GULDI:
Any questions about the contents of the documents? Okay. Before we go to the exec. session, is there anyone else here who wants to address the Committee today? Mr. Tempera. Before we go to the exec. session, you need just a few minutes? Before we go to the exec. session, so that we can after the exec. session just adjourn back to the -- no, we'll have to call the Stenographer back in because we may set a time too, but let's let Mr. Tempera have the microphone and speak before we go into exec. session, if we could, so that we don't have any contemplated further testimony at the end the exec. session.

MR. TEMPERA:
Good morning.

CHAIRMAN GULDI:
Good morning.

MR. TEMPERA:
Just a couple of comments, the members of the Committee --

CHAIRMAN GULDI:
I think it's good afternoon, yes.

MR. TEMPERA:
Thanks. The members of the Committee seem to be relying on newspaper articles with regards to a lot of their questions, and I just want to caution you, if you need any information, I'm available, my Co-Chair, Pete O'Leary, the members of the Employee Benefits Unit within Civil Services are available, there have been misstatements an misquotes in

the newspapers. That's number one.

Number two, the documents you're referring to for the most part have been provided, if not all of them, by my office and Employee Benefits, freely, without subpoenas, just by a request of the former Chairman of the Committee. The same documents have been provided to the newspapers. They FOIL'd them. We've gone beyond the requests as necessary under the FOIL Laws. We have gathered documents from throughout the County to try to make as much information available as possible.

With that being said, its just a request by myself. I'm sure Alan Schneider, as the head of Civil Service, would make his staff available. If you any questions with regards to the documents, I know Legislator Caracciolo was talking about questions he would like to review with the Committee, I don't think you'll find anyone more knowledgeable than the staff who's been involved with this for the last ten years, the Employee Benefits staff, myself, Pete O'Leary from the Committee standpoint.

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Understand that there is a difference between what the Committee does an what is done in negotiations. This has been made clear in the past with those extension agreements that have been talked about, are done through negotiations. The Committee has no role with regards to extension agreements other than being made aware that they've occurred, but that is done through the unions, between the unions and the Office of Labor Relations.

CHAIRMAN GULDI:
Legislator Fields has a question.

LEG. FIELDS:
The extensions you are referring to, are they the ones where we read in the minutes that the Committee wanted to extend the contract with Segal?

MR. TEMPERA:
No. I'm talking about the extension agreements that set up the Self Insurance Program with Suffolk County.

LEG. FIELDS:
Okay.

CHAIRMAN GULDI:
Legislator Caracciolo.

LEG. CARACCIOLO:

Jeff, thank you for your comments. Would you like to share with the Committee specifically what misinformation or misstatements or misquotes the news media, the print media has reported on your behalf?

MR. TEMPERA:
First of all, I think there's been a continuing miscommunication as to the financial status of the Employee Medical Health Plan. I think if you talk to Budget Review, they'll tell you the same thing that they've told me, that EMHP is not hemorrhaging dollars, that there are no drawers containing bills that haven't been paid.

Budget Review has been made aware, the Legislature has been made aware each and every year with regards to what the actual cost of EMHP has been. And I believe in 1998, there was a decision where the surplus money, approximately ten million dollars I think was taken out, the plan was underfunded in that year, utilizing the surplus. Thereafter, I think there had been an underfunding of health insurance costs and Budget Review, through their annual review of the budget, I think has established that fact as well.

Most recently, I'll tell you in today's paper I'm quoted as not being aware of what documents we utilized in negotiations. I don't have the paper in front of me, but there's a quote from me about not being aware of what happened in 1997, not having the documents before me. I was not the Director of Labor Relations in 1997, I was not a member of the Office of Labor Relations in 1997, and, therefore, I was not involved in the negotiations in 1997.

The negotiations for an extension agreement began, as far as I can see from records in the office, sometime either in late 1996 and early into 1997, and was based on any number of factors and information that was before the unions and before the Office of Labor Relations that ended up in the agreement that was signed in I believe October of '97 or thereabouts.

LEG. CARACCIOLO:
The same article, today's article also reports in a separate column that both administration and union officials, and I'm paraphrasing, have maintained that Segal duped them into making costly management decisions, critics now say that the record indicates otherwise. Do you care to comment on that?

MR. TEMPERA:
Well, I think it's ironic that Newsday is now relying on numbers that everyone agrees are wrong and have been wrong since 1997. They're relying on a number I believe in a -- and, Legislator Fields, you referred to a July annual report. That was a draft report that was never issued, that's why I think when you see it was issued, whether

it was September or October of that year, you don't see the chart in there. You have working documents that were provided to you where there might have been projections in there.

If anyone goes back and looks at the Segal projections, while I think you've heard Ernst & Young and others talk about the accuracy with regards to the actual plan rates, if you go from year to year, even in some of the documents you may have before you, where Segal made projections as to actual costs associated with Empire Plan, those costs have never been accurate. Therefore, for whatever reasons, their projections have never been accurate if you look at the documents, that I think it's clear from that standpoint that they haven't been accurate.

The numbers starting in '97 were, while you see a report, I think the number in the report in July of '97 talked about -- was 4.6 million dollars --

LEG. FIELDS:
I just have a question. It doesn't say anywhere that this is a draft report.

MR. TEMPERA:
I can't respond --

LEG. FIELDS:
How do you know it's a draft report or an official report?

MR. TEMPERA:
Because I know the actual report was not issued until I believe September, October of 1997. I was not in the Office of Labor Relations at that time, but I was a member of the Committee --

LEG. FIELDS:
But this says --

MR. TEMPERA:
I have the actual report that was handed out to the Committee and it doesn't contain those numbers.

LEG. FIELDS:
Okay. It just doesn't indicate draft or final. Okay.

MR. TEMPERA:
If I just may, that what you see in that draft report or the projections as to a loss that year, when Segal reviewed the 1997 plan year, that number that you see as the loss suddenly became an eleven million dollar gain to the County. I can't explain to you how they

did it, what happened, but from that point forward when you start seeing these numbers, the numbers were somehow skewed due to the errors that were made.

LEG. CARACCIOLO:
In essence, the numbers don't add up?

MR. TEMPERA:
Correct.

LEG. CARACCIOLO:
Where do we stand today with respect to this plan and fund balances?

MR. TEMPERA:
And again, I think you have to differentiate between the actual costs and what is budgeted with regards to the oversight of the plan. The actual --

LEG. CARACCIOLO:
Earlier you stated that the County underfunded the program, not that the program had cost overruns?

MR. TEMPERA:
Correct.

LEG. CARACCIOLO:
Okay.

MR. TEMPERA:
And I think if you look at the Budget Review reports, I think year by year they have shown what the actual amount should have been. If you look at, and again I hate to keep relying on the Segal reports, because I think it's wrong that we have to rely on numbers we all admit are inaccurate, but the actual cost data provided by Segal as I think Ernst & Young correctly stated, they were very close or on target with regards to the actual cost data.

And if you look at the projections in their annual reports year after year as to the actual costs of EMHP, you will find that they are fairly accurate with regards to the plan costs and the amount adopted in the budget did not reflect the actual projected costs of the plan.

LEG. CARACCIOLO:
On that note, the amount reflected in the budget, what is your

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understanding as to how that number came to be and why was it underfunded?

MR. TEMPERA:
I don't have an answer for you on that.

LEG. CARACCIOLO:
Mr. Pollert, could you answer that question?

MR. POLLERT:
I can only speak to the last two or three years. The last two or three years the Budget Review Office had estimated that the costs would be higher than the amounts included in the County Executive's recommended budget.

With respect to 2001, there was an assurance from the County Executive's Office Budget Director at that time that the numbers included in the recommended budgets would, in fact, materialize. That was incorrect and, in fact, costs exceeded what was included in the budget. That created a deficit and that deficit has continued through for a number of years.

So, for both 2001 and 2002, the -- for both 2001 and 2002, the amounts recommended by the County Executive were lower than the amounts that were estimated by the Budget Review Office when we forecast ahead.

LEG. CARACCIOLO:
Okay. Since, Mr. Chairman, we have Mr. Bortzfield here, who was Deputy Budget Director, I'd like to give him an opportunity, excuse me, to come up and explain that rationale.

CHAIRMAN GULDI:
Yes. We have two other Legislators who have questions for Mr. Tempera.

LEG. CARACCIOLO:
Okay. If we could just get a quick answer from Mr. Bortzfield on that.

CHAIRMAN GULDI:
I'd rather stick with one witness at a time, Mike, than hop all over.

LEG. CARACCIOLO:
All right. Then we can have him up later?

CHAIRMAN GULDI:
Yes. We'll have him up afterwards. Which order were you gentlemen in? Who wants to go first? Since Legislator Bishop is once again distracted, we'll go to Legislator Crecca.

LEG. CRECCA:
Jeffrey --

CHAIRMAN GULDI:
You've got to pay attention in class today.

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LEG. CRECCA:
Referring to today's Newsday article, and if I'm reading it correctly, the gist of the article is that the numbers in '95, '96 and '97 showed that the plan was losing -- I've got to correct my language here, show that the plan, the self-insurance plan was costing mere than the Empire Plan.

If you look at the numbers, and it doesn't matter whether you look at Ernst & Young's numbers or you look at Segal's numbers, for '95 and '96, and even, I'll even say -- I'm sorry, for '95 and '96, those numbers never really changed, Segal was producing the proper numbers in '95 and '96. In '95, there's a loss, I'll tell you right now, about 5.9 million, not loss again, difference between the cost of the Empire Plan, and in '96, it's 4.7 million.

Now, there are some differences when you get to '97, anywhere between four and a half million to nine million, that was the difference between the plans in that year. But I guess what the gist of the article was that in '97, the Board was aware of these, the differences in the costs and still went forward. Is that part inaccurate, because that's what --

MR. TEMPERA:
Let's back up for a minute. With regards to '95 and '96, I don't think there's any dispute that EMHP was more expensive than the Empire year -- Empire Plan for '95 and '96. And I think if you go back and check the testimony before this Committee, whether it was Pete and myself or Alan Schneider, we knew it was more expensive, because the Empire Plan was eating into their reserves for those two years.

LEG. CRECCA:
And that was the testimony, just for other Committee members who weren't there, that was the testimony during that time period.

MR. TEMPERA:
Again, from '95 and '96, that wasn't contained in the newspaper article, it was very clear that the plan, the Empire Plan rates, and I think you asked Ernst & Young, you ask anyone who was involved in health insurance will tell you, that they ate into their reserves and they kept their rates down for those two years.

In 1997, I don't have off the top of my head a clear review as to what information we received, I can tell you as a Committee member, we did not receive the Empire Plan comparison from the Segal Company that year, I don't know what information was given to the union and the

Office of Labor Relations that they relied on in negotiations. I do know that there were lengthy negotiations. And, as a matter of fact, there was some information that was presented to Budget Review, and as a result of Budget Review looking at documents, they came to the conclusion in 1997 that the Segal numbers with regard to a projection of costs were inaccurate. So, I don't know what exactly the unions and the Labor Relations Director relied on.

LEG. CRECCA:
I wasn't trying to get at whether or not there was a good or bad management decision made back in 1997, just the fact that I'm trying

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to clarify the Newsday article talks about in '95 and '96 that there were known losses or known differences where EMHP was costing more than the self -- than the Empire Plan. And I think that's what the article is driving at, and it's driving at that in '97, the contracts were extended despite these.

Now, there were other reasons, which the article doesn't go into, I'm not -- or may have been other factors, but from a factual point of view, is there anything in particular in the article that is grossly inaccurate?

MR. TEMPERA:
Well, again --

LEG. CRECCA:
Just from your knowledge.

MR. TEMPERA:
I think it's tough for me to tell you exactly what went on in negotiations, because I wasn't there, but I can tell you just from reviewing certain documents in my office that the negotiations began back in December or prior to '97, and they were ongoing discussions all the way through 1997. Newsday is referring to an agreement that was reached I believe in October of '97, if I'm not mistaken.

CHAIRMAN GULDI:
Do you have the article in front of you there?

MR. TEMPERA:
Yes.

CHAIRMAN GULDI:
Do you mind if I jump in?

LEG. CRECCA:
Yes. I'm going to let George just take over this line.

CHAIRMAN GULDI:
What part of the article -- you said the article contains inaccuracies. There it is, what's inaccurate other than the comments, the quotes attributed to Legislator Bishop and myself, which, of course, are for what they're worth, but the rest of the article, what's inaccurate?

MR. TEMPERA:
Well, again, I think the quote that I take exception to is the quote that comes to myself, that I was a member of the oversight Board at the time, present at the October 17th meeting, but he doesn't remember what was passed out at the meeting or what information was used in negotiations over the extension. What was said to Newsday at the time is that I was -- that the Committee does not negotiate the extensions, extensions are a product of negotiations between the Office of Labor Relations and the unions. So what they used in negotiations to arrive at an extension agreement, I would have no knowledge of as a Committee member.

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CHAIRMAN GULDI:
Hold on. But the Committee, you have no knowledge of it as a Committee member, but the Committee is Labor and Management, so what you're telling me is that because the same people did it in a different room, you had no knowledge?

MR. TEMPERA:
No. Again, what I'm saying --

CHAIRMAN GULDI:
I'm lost here.

MR. TEMPERA:
And I'll explain to you very easily. There are nine union representatives, there are nine Presidents to the unions, there are nine management representatives. Dave Greene was the Chair, Co-Chairperson, there were maybe one or two members of his office that were also Committee people. I was a Committee person, I worked in the Suffolk County Department of Labor. There were other people from other offices around the County.

We were not members of the Office of Labor Relations, we were not involved in negotiations. So I would have no -- and it wasn't shared with us, other than an update now and again to say, by the way, negotiations are progressing, negotiations are continuing. What was going on, what they were negotiating, where they were in process, was not shared with the management people or any non-union people on the Committee.

CHAIRMAN GULDI:
Any people other than the unions that were in negotiation.

MR. TEMPERA:
Union Presidents, that's correct.

CHAIRMAN GULDI:
But during that period, Dave Greene was on the Committee and doing the negotiations?

MR. TEMPERA:
Correct.

CHAIRMAN GULDI:
So presumably, he would have know?

MR. TEMPERA:
Yes.

CHAIRMAN GULDI:
Okay. Other than the characterization -- other than that clarification as to the characterization to you, what else is inaccurate in this article?

MR. TEMPERA:
Well, again, I think it's -- you're -- there's an assumption in Newsday that in 1997 the plan was more expensive than the Empire Plan

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and that the Committee knew about it and went forward anyway and I can't -- I can't say that that's accurate, because I can tell you that the Segal numbers, the projection, and it's only a projection that Newsday is talking about, the projection in 1997 that Newsday is relying on is simply that, a projection, that when they gave us hard numbers, rather than a loss for that year, wound up being an eleven million dollar plus in the County's favor.

CHAIRMAN GULDI:
I don't -- I don't -- I don't get it. I don't understand what you're talking about, I'm sitting here looking at the article and it's not what it says.

MR. TEMPERA:
It says that the cost for that year was projected.

CHAIRMAN GULDI:
Where, what paragraph? Where are you reading from?

MR. TEMPERA:
Second paragraph, first page.

CHAIRMAN GULDI:
Right. "Suffolk officials had earlier been told."

MR. TEMPERA:
In October 1997, when the County passed up a chance to switch back to the State plan, the cost for that year was projected to be 6.9 million more expensive.

CHAIRMAN GULDI:
Is that not accurate, isn't the number right, isn't that what the projection was?

MR. TEMPERA:
It was projected at that point in a preliminary report, but it was shown later on and Budget Review reviewed the numbers that Segal had and I believe it was even based on Budget Review getting back to Dave Greene that the numbers provided by Segal were proven to be wrong.

CHAIRMAN GULDI:
Yeah, but when?

LEG. BISHOP:
You're saying after --

MR. TEMPERA:
In August.

CHAIRMAN GULDI:
Of '98.

MR. TEMPERA:
Of '97.

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CHAIRMAN GULDI:
Well, wait a minute. The October 17th, how could --

MR. TEMPERA:
There was a resolution that you reviewed.

CHAIRMAN GULDI:
I don't see how you can have projections in August that affected -- that superseded the projections in October. I'm just, you know, having a little trouble with the time line here.

MR. TEMPERA:

There were projections provided in July, and I think that's the --

CHAIRMAN GULDI:
6.9?

MR. TEMPERA:
I think that's what Legislator Fields had talked about, this July --

CHAIRMAN GULDI:
That's the July draft.

MR. TEMPERA:
Correct. And that's the projection I think that Newsday --

CHAIRMAN GULDI:
I have no idea what they used.

MR. TEMPERA:
-- is talking about.

CHAIRMAN GULDI:
I'm just trying to figure out what you're referring to. I have that open here.

LEG. BISHOP:
It says that they discussed the gap at the October 17th meeting.

LEG. CRECCA:
The October 17th, 1997, meeting, the eighteen member Board discussed the gap and it's claiming that that's what the minutes showed.

MR. TEMPERA:
What the minutes would show is that we were given the Segal numbers without back-up.

CHAIRMAN GULDI:
No. The Segal numbers are dated July '98, you couldn't have had the July '98 numbers in, the numbers in the July '98 memo in October of '97. Okay?

MR. TEMPERA:
There's a projected, and I believe the projected number he's talking about is that when you would receive an annual report for the year prior, it would contain a projection for that year. So for the 1996

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plan year, we would receive it in typically October or November.

CHAIRMAN GULDI:

Of '97.

MR. TEMPERA:
Of '97. In that report, most likely there's a projection. I don't have the annual report in front of me, most likely there's a projection for that year.

LEG. CRECCA:
Yes, it is. It's in the '97 report, which was for the '96 year, '96 annual report. It's projected to be 6.9 million dollars for '97. For '96, it's 8.9 million. And for '95, it's 5.6 million. I'm looking at page two of the Employee Medical Health Plan of Suffolk County, October 10th, 1997.

MR. TEMPERA:
Okay. And I think if you go back and look at the previous year's report for '95 from the Segal Company and you look at their projection for 1996, because it would have been issued in '96, you will see that their projection in '96 is well off in terms of the numbers, millions of dollars off, if I remember correctly. The Segal projections for the current year for whatever reason were not accurate and I think what you -- what you're looking at here and you're relying on is a projection by Segal as to what the cost for '97 would be when, in fact, they had never proven to be accurate indicators of what the costs --

CHAIRMAN GULDI:
Hold on.

LEG. CRECCA:
Go ahead.

CHAIRMAN GULDI:
What you're saying is not that the Newsday is not reporting the numbers accurately, you're saying the numbers that Newsday is reporting were Segal's numbers and those numbers were proved to not be accurate, is that what you're saying?

MR. TEMPERA:
Well, I'm saying both. I'm saying the quote that was attributed to me, and I said that up front --

CHAIRMAN GULDI:
Okay. You said that, but in terms of the numbers, though, you're saying they're using Segal's numbers, which weren't accurate?

MR. TEMPERA:
Correct.

CHAIRMAN GULDI:

Okay. I understand what you're saying. The numbers seem to match the Segal numbers and the article seems to say they were the numbers that were before us at the time.

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LEG. CRECCA:
But if you had three years of bad -- if have you three years of bad running numbers and you're saying that Segal's numbers were inaccurate at that time and you couldn't rely on them, why would they continue to be employed beyond 1997? You're losing me here. In other words, you're saying that these numbers were worthless that were in their annual report?

MR. TEMPERA:
No, I'm not saying that. The actual cost data we got from Segal at the, as to the actual plan, were good numbers, we did not find out till later on that the projected numbers, not the projected, that the actual cost comparisons with Empire were wrong, but when you look at their projected numbers --

LEG. CRECCA:
Actually, they were right for '95 and '96.

MR. TEMPERA:
They were right for, for '95 and '96.

LEG. CRECCA:
'97 they start to go askew.

MR. TEMPERA:
'97 they went askew, but we did not get the '97 numbers until '98. But their projections, if you're --

LEG. CRECCA:
The article is talking about a decision that was made in 1997 based on '95 and '96 numbers and projected '97 numbers.

MR. TEMPERA:
My point is if you look at every annual report and you look at the last line where they talk about the projected number, that last line was always inaccurate, their projections.

LEG. CRECCA:
Their projections, right.

MR. TEMPERA:
Correct.

LEG. CRECCA:

But in '95 and '96, those numbers were correct, the 5.6 and the --

MR. TEMPERA:
Correct.

CHAIRMAN GULDI:
Anybody who can get projections on budget numbers right anywhere in Suffolk County, I want to go down and do some lottery picks for me, all right?

MR. TEMPERA:
And my point is it's not even -- they're not even close to what the

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actual numbers are. And you're asking the question, and again you're asking me to go back in time and I can't go back in time, because I wasn't there, but as a Committee member, when you talked about the projections for the current year by Segal, if you look at the current year projections, they were never accurate.

LEG. CRECCA:
But at that meeting back in October of '97, it was discussed about the loss that took place in '95 and '96.

MR. TEMPERA:
The loss in '95 and '96, correct.

LEG. CRECCA:
Again, I use the term loss loosely, saying compared to what the Empire Plan was.

MR. TEMPERA:
We were more expensive in '95 and '96, that's correct.

LEG. CRECCA:
I'm going to turn it over to Dave, I know you've been waiting.

LEG. BISHOP:
You asked my question, I'll yield.

LEG. FISHER:
Can you put me on the list, please?

LEG. CRECCA:
Sure. Then I'll go to Legislator Fields.

LEG. FIELDS:
I have a question that in some of these reports, for instance, there's an agenda that we got that was dated Friday, October 19, 2001, and on

one of the pages, and I noticed it in a couple of the reports, knowing that the numbers after the year, not the projections, but you knew that we were, that the numbers were --

MR. TEMPERA:
The previous years numbers.

LEG. FIELDS:
Right. And you then knew what those numbers were, and the fact was that we were not saving as much money as we had thought we would be saving.

MR. TEMPERA:
For '95 and '96.

LEG. FIELDS:
And that you knew that Segal's numbers were inaccurate.

MR. TEMPERA:
As to the current year projections, the Segal numbers --

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LEG. FIELDS:
But they were always incorrect.

MR. TEMPERA:
For the current year projections only. They had proven that the previous years' projections, there was no reason to doubt them. They were right on with regards to the actual plan rates.

LEG. FIELDS:
So in -- would it be fair to say that you questioned Segal or that anybody questioned Segal in 2001, or you did not?

MR. TEMPERA:
In 2001 with regards to?

LEG. FIELDS:
Whether or not they were giving us the correct numbers?

MR. TEMPERA:
And you have to bear with me for a moment as to when we discovered the error, it was October of '02, if I remember correctly, there was no reason to doubt the Segal comparisons to the Empire Plan at that point. The Committee was given a one-page memo with the numbers and a covering memo to say here is your comparison to the Empire Plan. The back-up documentation was only provided as a result of Civil Service in 2002 looking into the financial numbers and actually getting a hold of the back-up document.

LEG. FIELDS:
Just one other question is that when the Committee was asked whether or not to continue using Segal, at what point did the Committee know that Segal's numbers had been incorrect and made the decision to continue the contract with Segal anyway?

MR. TEMPERA:
There was no decision to continue the contract with Segal once we realized that the numbers were wrong, which was sometime late September of '02 or October 4th, thereabouts. Segal was notified thereafter that their contract was being terminated with the County.

LEG. FIELDS:
But when an RFP went out, it was decided to continue until the rest of the RFP came back anyway, right?

MR. TEMPERA:
I don't know when you're talking about. There was an RFP with Segal where they were the successful bidder in '02, and prior to the award of the '02 contract, we discovered the mistake and it was rescinded.

LEG. FIELDS:
Thank you.
Legislator Caracciolo, you had a question for the Director of the Budget Office? I'm sorry, Legislator Bishop was out of the room when you yielded, I'm sorry, you've got one left.

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LEG. FISHER:
No. I'm on the list.

CHAIRMAN GULDI:
Two left.

LEG. BISHOP:
Mr. Tempera, is the following statement accurate, I have three statements, I'm going to read them and say, is this accurate.

CHAIRMAN GULDI:
True or false.

LEG. BISHOP:
"The EMHP Committee made the decision to maintain a self-insurance program because it was misled as to the amount of savings as compared to the Empire Plan."

MR. TEMPERA:

False. And if you want an explanation, the Committee did not make the decision to continue to be self-insured.

LEG. BISHOP:
Oh, that decision is made between labor relations, so you can't comment on that, because you wouldn't know?

MR. TEMPERA:
Correct.

LEG. BISHOP:
And it wasn't discussed in the Committee, why we were going --

MR. TEMPERA:
We only received updates as to when it was extended, we did not get into --

LEG. BISHOP:
What's the function of the Committee if the Labor Relations and the labor unions negotiate the terms?

MR. TEMPERA:
The Committee oversees the plan. The Committee makes decisions as to appeals, the Committee makes decisions as to dealing with vendors, the Committee makes decisions with regards to the general oversight with regards to the health insurance plan of Suffolk County.

LEG. BISHOP:
Okay. So the terms of the plan as it relates to members, that wouldn't be found in the minutes or activities of the Committee?

MR. TEMPERA:
The benefit levels as negotiated were to be at all times similar to the Empire Plan, that's what we was negotiated. If there were benefit changes that were passed through from the Empire Plan, that would be reviewed by the Committee. If the Committee decided to adopt the change, we were just mirroring what the memoranda of agreement

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required.

If the Committee decided not to adopt a change in accordance with the Empire Plan, it would then go back to the County, Director of Labor Relations and the union to initiate a sign off.

LEG. BISHOP:
So the negotiation between the unions and the Director of Labor Relations, the Office of Labor Relations, is a broad agreement, which says benefits are to mirror what the State Plan, the Empire State Plan

provides, and then it was up to the Committee to interpret what that means, is that correct?

MR. TEMPERA:
No. The Committee wouldn't interpret the memorandum of agreement, the Committee would review the benefits that were passed through to from the Empire Plan. Empire Plan would come down with benefit A, it would come to the Committee, Committee would just say, okay, this is a new benefit we have to adopt because the Empire Plan has this benefit.

If upon analysis by the consultants, someone said this is the not the right way to go, if the unions, the Labor Relations said this isn't going to be cost effective for the County, we shouldn't adopt this, then it would go back to the unions and Labor Relations --

LEG. BISHOP:
So the October 17th, 1997, meeting of the eighteen member Board did not consider whether to continue as a self-insurance plan?

MR. TEMPERA:
The Committee, and I don't have the minutes in front of me, Legislator Bishop, I believe what happened at that meeting where they were -- the Committee was updated that an agreement was reached, if I'm not mistaken.

LEG. BISHOP:
I don't know. Were you there?

MR. TEMPERA:
I don't have the minutes in front of me from 1997. And if the minutes reflect that the Committee was updated, it was simply an update that there was --

LEG. BISHOP:
I mean the position that you're taking, and I'm not saying now, as if you took a different position previously, but the position you're taking now is that at those meetings you just went over what other people decided and said, okay, let's implement it.

MR. TEMPERA:
Well, I think that's an oversimplification of what the Committee does, but it was, any issues with regard to labor negotiations was not done with the Committee.

LEG. BISHOP:
You know, I think what the Legislature is interested in, more than

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anything else, is when the critical decisions were made, what information was in front of the decision makers, and that's what I'm trying to get at. Now, what you're telling me is that when we look at the eighteen member Committee, that's not the decision maker.

MR. TEMPERA:
That's correct.

LEG. BISHOP:
The decision maker is the Director of Labor Relations and the unions and not the eighteen member Committee?

MR. TEMPERA:
With regards to the extension agreements, absolutely.

LEG. BISHOP:
Okay. So that was statement one. Statement two was, "the EMHP Committee made decisions to expand coverage because of misinformation," same answer. "Coverage levels or what we call benefit levels were determined by negotiation between the Labor Relations and the --

MR. TEMPERA:
Other than simply adopting, as I just explained, if we mirrored Empire and Empire came down with --

LEG. BISHOP:
You just had this one mandate, that if Empire does it, we have do it too?

MR. TEMPERA:
That was correct, we would --

LEG. BISHOP:
But if it's something we want to do differently, some additional benefit that's outside of Empire, that didn't come from the eighteen member Board, that came from the Director of Labor Relations and negotiation with the unions?

MR. TEMPERA:
There might be a review by the consultants, report back to the unions and Director of Labor Relations with a recommendation, adopt/not adopt, but ultimately it came down to a sign off between the Director of Labor Relations and the unions.

LEG. BISHOP:
No vote of the eighteen member Board?

MR. TEMPERA:
Correct.

LEG. BISHOP:
Not in their purview. Okay. Thank you.

CHAIRMAN GULDI:
Okay. Is it going to be lengthy?

LEG. FISHER:
No. It's a short question.

CHAIRMAN GULDI:
Because I thought this was going to take a minute, I apologize to Counsel. I thought we were going to be done, I have completely lost control of what's going on here. And, Mr. Bortzfield, we're going to wait until after the exec. session, because I am sure that regardless of how short and concise Legislator Caracciolo thinks we'll need your testimony, that it's going to take longer than that. So, please --

LEG. FISHER:
Well, mine will be concise and short, because actually Legislator Bishop asked my primary question, which was whether or not the Committee made the decisions to extend or not, but I have another question. You referred to the role of the Committee being a role wherein you looked at the benefits provided by the self-insurance plan and Empire and tried to maintain a constant level of parity with Empire.

In 1997, it was testified by the people from Ernst & Young that there was a structural change in Empire, that they moved into a five-tier system. Did you look at that system yourselves in the Committee?

MR. TEMPERA:
Let me just back up. Again, an oversimplification of what the Committee does, the memoranda of agreement that was signed in 1992 spells out what the Committee does. Just in terms of the oversight, there are bylaws of the Committee, very detailed as to how the Committee oversees the entire Employee Medical Health Plan. In 1997, when the Empire Plan went to a five-tier system, I can't tell you when the Committee was made aware of that, I don't believe it was in 1997 and I believe it was probably the Employee Benefits Unit through consultation with the Segal Company where that was determined that there was a new set of rates and the Segal Company in doing the comparison thereafter came into play with the five-tier system.

But from the Committee standpoint, that would be something we'd look at once a year when we received a report from Segal as to what would have -- what would it have cost us had we remained in the Empire Plan.

LEG. FISHER:

But haven't you said that one of your primary functions was to try to keep the same level of benefits and types of benefits in the self-insurance plan as exists in the Empire Plan, and this seems like it would be a major change in the kind of services provided by Empire where they moved into the five-tier system, wouldn't that have been something that would have been a critical issue for you to look at?

MR. TEMPERA:
It's apples and oranges from a standpoint of providing actual costs and benefits. You're talking about paying a premium to the Empire Plan, and in paying a premium, which you don't do with self-insurance, but in paying a premium, they set up three additional tiers of premium payments. That's in effect what the five-tier system is.

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LEG. FISHER:
But those tiers provide different levels of services, don't they?

MR. TEMPERA:
No, no. The services are the same, it's just that you have people age sixty-five and older who are eligible for Medicare, Medicare becomes primary with regards to their benefits, EMHP is secondary. And I think in recognition of that, the Empire Plan said we are going to charge municipalities a lesser premium for those sixty-five and older since the cost associated with them theoretically are less because we're secondary with regards to the insurance.

LEG. FISHER:
So that the five-tier system is not a five-tier level of service, but rather just a five-tier level of premium payments?

MR. TEMPERA:
That's correct.

LEG. FISHER:
And you would not have become part of that, because again that's Mr. Greene and the unions that would have looked at that and Segal?

MR. TEMPERA:
Well, it would be, again, the comparison as to what the costs would be had we been in Empire, which would be through the Employee Benefits Unit, the Segal Company in providing this one year, one time a year report as to the comparison.

LEG. FISHER:
But apparently this five-tier system is what led to Segal making the greatest errors that it made.

MR. TEMPERA:

Absolutely.

LEG. FISHER:
Okay. Thank you.

LEG. CARACCIOLO:
George?

CHAIRMAN GULDI:
You started this. You've got sixty seconds, then I'm going to recess the meeting for the exec. session and you can come back and pick on them some more afterwards.

LEG. CARACCIOLO:
A very short question. Do other municipalities of comparable size to Suffolk, i.e. Westchester, Erie, Monroe, Nassau, provide medical benefit plans identical or very similar to the one that's self-insured here in Suffolk? Not as a self-insured plan per se, maybe they do or they don't, you can comment on that as well.

MR. TEMPERA:
I can't tell you exactly what the other jurisdictions offer in terms

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of health benefits, what I will tell you is as part of our discussions with Ernst & Young, I asked the question of Ernst & Young, is it typical for a County of our size to be self-insured or to be in an Empire Plan, and the response back from Ernst & Young was it is typical for a County of this size to be self-insured.

CHAIRMAN GULDI:
I think this is a whole new line of questioning and I think we're going to make my motion to -- take my motion now to go to executive session to discuss the litigation strategy in the matter of Suffolk County against the Segal Company, approving the presence of County Attorneys, Counsel to the Legislature, Budget Review Office, Legislative staff, personnel, Legislators. Anyone else who gets to stay for this? Anyone? Counsel, is there anyone else you want present for the County in the room?

MR. SKLAR:
Mr. Bortzfield can stay.

CHAIRMAN GULDI:
If you keep him here, he won't be able to escape before Caracciolo gets to him.

MR. SKLAR:
It's up to him, I have no objection.

CHAIRMAN GULDI:
And the County Exec's Budget Office. Second by Legislator Crecca. Discussion? All those in favor? Opposed? We'll go into executive session. We'll go back to regular session and continue at that time.

(EXECUTIVE SESSION: 1:47 P.M. - 2:03 P.M.)

CHAIRMAN GULDI:
I'd like to call the meeting back to order. Legislator Caracciolo has questions for Mr. Bortzfield. I want to make a permanent apology for the way I macerate your name, it's because I have some friends in Quogue that used to run the New Yorker Magazine and now run the Quogue Liquor Store known as the Botzfords, they have no "R" and they end in the "Ford," it starts with a "B," and everything I do to your name is their fault.

MR. BORTZFIELD:
I'll accept that.

CHAIRMAN GULDI:
The next available date the Committee members are going to have to attend yet another special meeting of the Ways & Means Committee.

LEG. CRECCA:
If I could suggest next Monday, but do it in the afternoon at like two o'clock, it may be very short.

LEG. CARACCIOLO:
No, we have ELAP.

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LEG. CRECCA:
On Monday?

CHAIRMAN GULDI:
Yes. On the 3rd?

LEG. CARACCIOLO:
It goes all afternoon.

CHAIRMAN GULDI:
Forget it.

LEG. CRECCA:
You should talk to the Committee Chairman of that Committee and tell them to condense it a little bit.

LEG. CARACCIOLO:

It's an important Committee.

CHAIRMAN GULDI:
Okay. So that's out. The 25th is out.

LEG. CRECCA:
The problem is aren't there other committees going on that week?

CHAIRMAN GULDI:
The committees have the whole week, forget that week.

LEG. CRECCA:
What about Friday? There's no committees on Friday.

CHAIRMAN GULDI:
Friday, the 7th.

LEG. CRECCA:
We really want to get this -- first of all, it's committee week for us anyway, and second of all, we want to get this done sooner rather than later.

LEG. CARACCIOLO:
I'm tied up that day.

LEG. CRECCA:
The entire day?

LEG. CARACCIOLO:
Yes.

LEG. CRECCA:
I don't want to give these guys too long.

CHAIRMAN GULDI:
That gives us the 10th and 11th.

MR. SABATINO:
11th is a night meeting.

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CHAIRMAN GULDI:
11th is a night meeting, so let's not do it the 10th.

LEG. FIELDS:
Why not the morning of the 11th?

LEG. CARACCIOLO:
Why don't we do it before the Riverhead meeting, George? Twomey,

Latham, Shea is right there, how much more convenient can we be?

LEG. CRECCA:
The only problem is, doesn't the subpoena require them to appear here?

CHAIRMAN GULDI:
Yes, it does. The existing subpoena requires them to be here.

LEG. CRECCA:
It's just technically.

LEG. FIELDS:
We can still have it here in the morning. Why not?

CHAIRMAN GULDI:
I'm just trying to figure out what else is in this calendar.

LEG. CRECCA:
What time is the meeting, four?

MR. SABATINO:
Four o'clock.

LEG. FIELDS:
Four o'clock in Riverhead.

LEG. CRECCA:
What if we did it here at one o'clock?

CHAIRMAN GULDI:
We started here at 11:30 this morning, it's 2 o'clock and we didn't have any witnesses, folks.

LEG. CRECCA:
First of all, you're assuming the witnesses are going to show up. If they are, you take them, you start testimony on them, if you have to continue it, you continue it, now you got them.

LEG. FIELDS:
Why don't you start at 9:30?

LEG. CRECCA:
We can do that too, it's fine with me.

CHAIRMAN GULDI:
All right.

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LEG. CRECCA:

That's exactly what I was doing, I thought if we start in the afternoon, it would be better for --

LEG. FIELDS:
Don't you have long days anyway? You're up in the morning and you go to bed at night.

CHAIRMAN GULDI:
Excuse me? Some of us do it the other way around.

LEG. CARACCIOLO:
What about the following day?

CHAIRMAN GULDI:
The 12th? The 12th is the day after a night meeting.

LEG. FISHER:
One o'clock sounds like a good idea.

LEG. CARACCIOLO:
One o'clock, George.

CHAIRMAN GULDI:
One o'clock on?

LEG. CARACCIOLO:
On Tuesday, here.

LEG. FIELDS:
But you don't have enough time.

CHAIRMAN GULDI:
One o'clock is not enough, we have to be out the door by three o'clock.

LEG. CARACCIOLO:
Eleven o'clock.

LEG. FIELDS:
Why not 9:30?

LEG. CARACCIOLO:
Because that's a long -- you're making the day longer than it has to be.

LEG. CRECCA:
Eleven o'clock and George will bring lunch for all of us.

LEG. CARACCIOLO:
Eleven o'clock.

CHAIRMAN GULDI:
Eleven on the 11th?

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LEG. CRECCA:
3/11 at 11:00.

CHAIRMAN GULDI:
Okay.

LEG. CARACCIOLO:
Bob, simple question. Mr. Bortzfield, earlier we heard a reference to it was a well known and established fact that the County underfunded their contributions for the health insurance plan. Is that as you understand it to be, are those facts accurate?

MR. BORTZFIELD:
I don't think it's a well known established fact that it's underfunded, I mean there is some instances of where it's run a deficit year rather than surpluses, yes.

LEG. CARACCIOLO:
Well, I guess maybe Mr. Pollert then could elaborate on the representation.

MR. POLLERT:
The year that I was specifically talking about was in 2001 where the previous Budget Director disagreed with the estimates of the Budget Review Office with respect to the expenses and had represented that even though we felt it was underfunded, that the costs would be coming in as budgeted. In fact, in 2001, we ran a nine million dollar shortfall. For 2002, we also recommended to the Legislature that the Employee Medical Health Program was also underfunded, that, in fact, turned out to be the case and there was an emergency resolution at the end of this year, which had a transfer in an additional 8.7 million dollars, only to take us through December 31st.

Therefore, for a number of years, the Budget Review Office in our analysis came up with a recommendation that the Employee Medical Health Program was under budgeted in the County Executive's recommended Operating Budget.

LEG. CARACCIOLO:
Was that the first time, the only time?

MR. POLLERT:
I would have to go back to our previous reports, but it's my recollection that for perhaps the last three to four years, we had

made the recommendation that the program was underfunded.

LEG. CARACCIOLO:
Okay. Bob, are you familiar with what now appears to be facts based on the Budget Review Office review of the fund?

MR. BORTZFIELD:
Some of the history, but if I may add a little bit more of the history. In 1999, when the Budget Office, the County Exec's recommended budget wanted to carry over a ten million dollar surplus in the fund to cover the additional expenses, eight million dollars of that was taken out by this Legislature to run other programs and stuff

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to take the money out in case that year it did run a deficit, you know, from the lack of funding that was this in there. So, there is instances where, yes, there will be, you know, there will be deficits versus surpluses. Budgeting is, with anything, it's estimating what the actual costs of your program would be.

LEG. CARACCIOLO:
Okay. So the actual experience then given that information, what occurred the following year, Fred?

MR. POLLERT:
In 2000 and --

LEG. CARACCIOLO:
It would have been 2000, because Mr. Bortzfield said 1999 the County Exec. had submitted a budget that would have funded an additional ten million dollars for the plan, the Legislature used eight of the ten million dollars for other programs. What was the actual experience?

MR. REINHEIMER:
I believe what the Budget Director is referring to is that the Legislature used the fund surplus rather than maintaining the surplus, we reduced interfund, interdepartmental transfers into the fund and used the fund balance rather than fully funding it, fully funding health insurance.

MR. POLLERT:
What I think is going to be worthwhile, as Legislator Guldi had mentioned, part of the reason that the Audit Committee decided not to have the independent auditors come up with the comparisons between the different budget estimates is that at the last Audit Committee meeting, the County Executive's Office said that they were working on a spreadsheet, which shows the comparisons between what the Department had requested and what Segal had recommended be included in the budget, what the Budget Review Office recommended, what was actually

included in the budget and then what the actual numbers were. And that spreadsheet, I imagine, will be available in time for the next Committee meeting.

LEG. CARACCIOLO:
Okay. So let's leave it there until we see that spreadsheet. Thank you, Mr. Chairman.

CHAIRMAN GULDI:
Fred, just since I just found the September 23rd, 1997, memo that you just put on my desk, do you want to address this on the record?

MR. POLLERT:
Sure. I would be happy to.

CHAIRMAN GULDI:
Explain to me -- did you distribute it to all Committee members?

LEG. FIELDS:
Yes.

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CHAIRMAN GULDI:
Okay.

MR. POLLERT:
Basically, when Jeff Tempera just spoke, he refreshed our memory that, in fact, in 1997, the County Executive had introduced a resolution to cap expenses in the Employee Medical Health Program at four percent, and it was an agreement that was signed off on by all the union members.

When the Budget Review Office did the analysis on the numbers, we found that there was a material mistake on the part of the Segal Company. We informed the Director of Labor Relations and sent him our internal work papers that showed that if, in fact, the resolution was adopted as recommended by the County Executive, there would be a material shortfall in the budget and that we would have to come up with twenty to thirty million dollars extra in the budget.

The Director of Labor Relations provided our work papers to the Segal Company, that acknowledged that they had made a material mistake, and the resolution was withdrawn and was never reintroduced. And that's what we had alluded to in our 1998 Operating Budget review. This is the back-up work papers. But apparently the gist of it is that the Segal Company had made other mistakes other than a comparison to just the Empire Plan.

CHAIRMAN GULDI:
Yeah, but I'm confused, because the memoranda of agreement annexed to

the proposed legislation imposing the four percent cap contains the four percent cap. So since the agreement contains the four percent cap, what are we doing here? I don't understand, I'm just confused.

MR. POLLERT:
The -- I would have to defer to Legislative Counsel, because what's a little bit confusing is that the County Executive's Office had maintained in the past that there was no role for the Legislature, because this was a matter of contract negotiations between the County and the labor unions. However, in 1997, there, in fact, was a resolution that asked the Legislature to approve a modification, and it was withdrawn when we found out that it was in error. So it is really a question to Legislative Counsel why sometimes they bring forward resolutions and why sometimes they do not.

MR. SABATINO:
I guess it's the consistency of the inconsistency, but I dont know what the rationale is, because every time I raised the question with regard to the need for, you know, approval, we're told that there's some kind of an opinion from Labor Counsel to the effect that the Legislature doesn't have to ratify those types of agreements. So, I don't know what their rationale is.

I know that the Taylor Law says when something requires appropriations, which obviously the extension of a health benefit program would require, then you have to have Legislative approval. That's what the State law says, it's also what Chapter 44 of the Suffolk County Code states. But why the one in 2001 and the one in

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1992 was not brought to the Legislature, I don't know. And why a substitute for the one initially brought in 1997 was never brought before the Legislature, again, I can't respond other than to say that there's been this statement made in the past somehow this is outside the jurisdiction of the Legislature.

LEG. FIELDS:
Can I ask a question?

CHAIRMAN GULDI:
Yes.

LEG. FIELDS:
What's the 85 Account? It's on page six of the --

MR. POLLERT:
That was the fund number for the Employee Medical Health Program. It used to be called Fund 85 and it's now Fund 039, so there was a change in the fund identification and numbers. So, it's the same as Fund 39

now.

LEG. FIELDS:
Okay.

CHAIRMAN GULDI:
Mr. Bortzfield, back me up just a little bit, let's keep it simple for me. This is, the Employee Medical Health Plan is a budget item, it's on our budget, do we have a line allocated to it or a series of lines?

MR. BORTZFIELD:
Separate fund. A number of lines, but a separate fund.

CHAIRMAN GULDI:
Okay. The annual -- it's projected appropriation for each year is prepared by the -- as part of the County Exec's budget and submitted to the Legislature with the rest of the budget?

MR. BORTZFIELD:
Yes.

CHAIRMAN GULDI:
Is its preparation different from any other departmental budget in that it begins with a budget request?

MR. BORTZFIELD:
No. It all works the same way.

CHAIRMAN GULDI:
Who does the budget request for the Employee Medical Health?

MR. BORTZFIELD:
The responsible department. In this case, that would be Civil Service.

CHAIRMAN GULDI:
Which is now Civil Service, it formerly had been the Comptroller's

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Office?

MR. BORTZFIELD:
Correct.

CHAIRMAN GULDI:
Okay. When that proposed budget comes to the County Exec's, when the budget request comes to the County Exec's Office, it's reviewed by the County Exec's Budget Office for inclusion, amendment and/or inclusion in the budget?

MR. BORTZFIELD:
Absolutely, yes.

CHAIRMAN GULDI:
Okay. So there is no special treatment for this, it's just treated and then it comes over to Budget Review where inevitably they analyze it, we omnibus it, he vetoes it, we override and then we don't follow it anyway.

MR. BORTZFIELD:
That's the process.

CHAIRMAN GULDI:
So it's just treated like everyone else. What's in the -- what back-up do you see in the budget request, what's the budget request prepared on?

MR. BORTZFIELD:
The budget request is based on reports from {Aeros} & Consultants, information provided by the Department, you know, on their own, you know, analysis --

CHAIRMAN GULDI:
But how can you take a budget that's been growing from year to year and take a report from an outside consultant that projects a reduction in costs with no reason for the change?

MR. BORTZFIELD:
Well, there's always rationale that they have along with their projections as to what cost impacts, whether increases or decreases, you know, they're going to have rationale along the lines. Whether you agree or disagree with those projections are subject to each Budget Office's interpretation.

CHAIRMAN GULDI:
That's why we have the clarity that we achieve through the rest of the process.

MR. BORTZFIELD:
Right. It's looked back historically over the years as to take initial projections versus what the actuals came in, which are obviously two years later after you make your initial budget projections, and then things for the most part, this and any other expenses, are very rarely that close to original budget estimates.

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CHAIRMAN GULDI:
But they're usually pretty close to what Budget Review comes up with,

aren't they?

MR. BORTZFIELD:
No, they're not close to them either.

CHAIRMAN GULDI:
Oh, come on, Fred, he's dissing you here.

MR. BORTZFIELD:
Just being honest.

CHAIRMAN GULDI:
Yeah, I know. But the -- so, now I understand, there's no magic here, this is just a standard budget item.

MR. BORTZFIELD:
If we had magic, it would be a heck of a lot easier.

CHAIRMAN GULDI:
If we had magic, we probably wouldn't have a deficit in any account in the budget, would we?

MR. BORTZFIELD:
Right.

CHAIRMAN GULDI:
All right. I don't have any further questions. Fred?

MR. POLLERT:
Just to clarify.

CHAIRMAN GULDI:
I'm just trying to figure out, how did we get here? And the other question is, so what, we got one wrong, when was last time we got one right?

MR. POLLERT:
Clearly there are different items in the budget that have more variability associated with them. When you do forecasts on miscellaneous revenues or some areas of expenditures, you can have a tremendous amount of variability. There is a good methodology with respect to employee medical health insurance in the sense that you have an idea of what your number of employees are, you do have historical data, so it's not just a total guess. Clearly we try to be as accurate as possible, as does the County Executive's Office.

One of the variabilities, of course, is that when the budget is adopted, it is ultimately up to that Employee Executive Management Labor Group to decide what the actual benefits will be. So the County Executive's Budget Director can put in a number, if there's a change to benefit plan or if there is a large group of new hiring that was not anticipated, it throws those numbers off. But in theory, this is one area of the budget that we should be relatively accurate and the noise that's being introduced in part is due to hiring practices

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and/or changes to the benefit plan approved by the Labor Management Group.

CHAIRMAN GULDI:
Okay. Counsel?

MR. SABATINO:
Mr. Chairman, I had a chance to look at those documents that Budget Review had previously submitted. Just as a point of observation, on page five of the proposed agreement, it would have provided for that Labor Management Committee to modify the nature of our level of benefits under the plan, so I don't know if another agreement actually replaces this, which we never saw and got voted on, but if it did and it contained that provision, then that would answer the question that Legislators Bishop and Crecca had asked this morning.

MR. POLLERT:
Nothing ever replaced it, that was approved by the Legislature that I'm aware of.

MR. SABATINO:
The point being that it was contemplated in '97 to have the Labor Management Committee modify the level of benefits, that was the question that Legislators Crecca and Bishop had asked this morning. I was not aware of this agreement.

CHAIRMAN GULDI:
Okay. All right. Any other questions? Anybody else want -- do we have any more volunteers? No?

LEG. CARACCIOLO:
On that point.

CHAIRMAN GULDI:
On which point?

LEG. CARACCIOLO:
The point that Counsel just made. Did not the Newsday article cite the reference, was it '96 or '98? I'm sorry, '97, it was '97. All right. Okay.

CHAIRMAN GULDI:
Okay? All right. There being no further business before the

Committee, we are scheduled to resume this Committee meeting on the 11th at 11:00 right here. That's a warm-up for the Legislative meeting later that day.

LEG. CARACCIOLO:
George, if they are not going to appear, will you please advise us in advance?

CHAIRMAN GULDI:
Unless we have as we did this morning the opportunity to schedule other productive work for the same time slot, I certainly will advise. While I had advice that they were not going -- while I had the letter, I knew they weren't going to be here this morning, somehow I was

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confident we were going to be able to apply ourselves to the time, with your help, Mike. We stand adjourned.

(THE MEETING WAS ADJOURNED AT 2:25 P.M.)

{ } DENOTES BEING SPELLED PHONETICALLY.

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